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!! IMPORTANT MESSAGE ON PAGE 115 !!

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EC Merger Control: 10th anniversary conference - 14/15 September 2000

*Alexander SCHAUB, Director-General of Competition DG,
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Introduction

A conference, attended by over 400 people, took place in the Brussels' Metropole Hotel on the 14th and 15th September to celebrate the 10th anniversary of the introduction of European merger control. Introducing the conference, Mr Romano Prodi, the President of the European Commission, took the opportunity to stress the importance that the Commission places on the role of DG COMP in maintaining competitive markets around the globe. He described the Merger Regulation as not only one of the Commission's "great success stories of the last decade" but also as "a cornerstone" of the Community's competition policy and re-affirmed the Commission decision to increase the resources available to merger control as soon as possible.

The conference was organised by members of the Merger Task Force in association with the International Bar Association (IBA), and attracted speakers of the highest calibre, including three previous Competition Commissioners, Peter Sutherland, Lord Brittan and Karel Van Miert, senior representatives of competition authorities in both Europe and the United States, top practitioners and representatives from business. There was a similar spread of people in the audience, including representatives from over 35 countries, including all Member States, the accession countries, and others, such as the US, Canada, Japan, Australia, Russia and South Korea.

ARTICLES

Over the two days of the conference, chaired by J William Rowley QC, Chairman of the IBA's section on Business Law, and Colin Overbury, the first Director of the Merger Task Force, the speakers and participants in the open sessions covered a wide spectrum of issues and not only provided an excellent opportunity to take a retrospective look at the experience gained during the regime's first ten years, but also provided a forum to highlight issues and challenges which the Commission needs to address for the future. The conference started with debate on the increasingly global context within which competition authorities exist, moved onto several important contributions examining the Commission's substantive developments, and ended with an examination of various procedural aspects of how the Merger regime currently operates and how it could and should operate. Mr Monti, who gave the conference's closing address, welcomed the "richness and depth" of all the contributions from speakers and participants in the open sessions alike.

Merger Control in an International Context

Globalisation continues to create many challenges for merger control authorities around the world and the importance of these challenges was stressed by all the contributors. In this opening session which was moderated by Sir Christopher

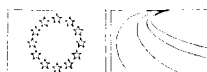
Bellamy (Head of the UK Competition Tribunal) the Director-General of DG COMP, Alexander Schaub, opened by highlighting potential dangers which can arise from global mergers in highly concentrated industries and the growing necessity for the Commission to analyse these mergers from the perspective of oligopolistic as well as single firm dominance. He also elaborated on the bilateral co-operation, in particular with the US authorities, which has evolved significantly in recent years. This was a theme taken up by Robert Pitofsky, Chairman of the US FTC, who stressed the benefits of this close co-operation which has led to considerable convergence between authorities on both substantive and procedural matters. In his address Mario Siragusa, a leading competition lawyer, set out how bilateral co-operation should function optimally from the practitioner's point of view.

Joel Klein, Assistant Attorney-General of the US DoJ, agreed that bilateral co-operation is an excellent template but by itself is insufficient to cope with present and future challenges posed by global mergers. He therefore called for a Global Competition Initiative along the lines set out in the ICPAC recommendations made earlier this year. Jacques Bougie, CEO of Alcan Aluminium Ltd, gave weight to the benefits that such an initiative could bring by highlighting the transactional

costs involved in filing global mergers, and stressing that legal uncertainty is the "number one enemy" of business.

In providing an investment bank's perspective on this issue, Peter Sutherland, now Chairman and Managing Director of Goldman Sachs, also emphasised the need for legal certainty and for strengthened co-operation on both a bi-lateral and multi-lateral basis. He also stated that, together with an independent central bank and a strong securities regulator, strong and independent competition policy is one of the three critical components of a successful economic model, and that in his view, DG Competition has to date "amply fulfilled its part of the equation".

Many of the challenges raised by these contributors were acknowledged by Commissioner Monti in his closing speech. In particular, he emphasised the importance placed on the bi-lateral arrangements between the EU and the US and Canada which have formed the model for arrangements with the EU's other trading partners and stressed that these will remain "fundamental" in the future. At the same time, the Commissioner welcomed Joel Klein's call for a move towards multi-lateralism as a constructive step to address the concerns raised by both business and the legal community about the potential for inconsistent decisions across the globe, and the spiralling costs incurred in



making multi-national merger filings.

Recent developments in EC Merger Control Law

In the first afternoon session, moderated by Philippe Chappatte, Götz Drauz, Director of the Merger Task Force, discussed the Commission's assessment of dominance, and in particular developments in dealing with oligopolies, vertical mergers and potential competition, all of which have been relevant in recent Phase II cases. In relation to the first of these, Mr Drauz emphasised how the Commission has sought to apply oligopoly theory in its analysis of oligopolistic situations, in order to distinguish between "good" oligopolies, namely those markets which may have only a few players but which are intensely competitive, and "bad" oligopolies which will engender anti-competitive outcomes. Mr Drauz also stated that it is the Commission's intention to refine and further develop its policy in this difficult area through individual cases and to enhance legal certainty through issuing a notice dealing with the assessment of oligopolistic dominance under the ECMR.

In commenting on these issues, Frédéric Jenny, Vice-President of the Conseil de la Concurrence in Paris, outlined the theoretical perspective for assessing oligopolies, while Jochen Burrichter, a leading competition lawyer, raised the issue of the

extent to which other members of an oligopoly should be involved in the administrative procedure of a notified merger. The session ended with a lively open discussion, including a number of interesting questions from the floor.

Remedies: Finding the Right Cure

Barry Hawk was moderator for the third main session of the conference which addressed the issue of remedies and the difficulties faced in trying to find solutions to particular competition problems in the context of merger investigations. Claude Rakovsky, Head of Unit in the Merger Task Force, described how the Commission's practice is evolving. His talk covered both procedural and substantive issues, the most important of which are as follows. First, when companies propose remedies it is vital that they be designed to address the competition problems that have been identified. Second, the burden of proof rests with the companies proposing the remedies to provide proof that they will be effective. Mr Monti took this further, highlighting that for the Commission to accept remedies, it must be persuaded that a purchaser will not only need to be independent and viable, but that it will need to have the right incentives to compete. Mr Monti also stressed that since complexity leads directly to uncertainty, the solutions proposed cannot be

more complex than the problems they are designed to address.

Kevin Arquit, Chair of the Antitrust and Trade Law Committee of the IBA, outlined developments in the practice of the US authorities over the years and presented a critical assessment on the findings of the recent FTC study on its divestiture process. Juan Rodriguez, BP Amoco's Antitrust Counsel, gave the acquirer's perspective and highlighted that companies need to anticipate from the outset that remedial relief may be necessary and to consider what implications this may have. Cornelis Canenbley discussed certain problems in the context of remedies. He described the practice under German merger control law and emphasised how important it is that merger decisions in the US and in Europe should be taken at approximately the same time. Rachel Brandenburger questioned, in particular, whether it might not be appropriate to consider the possibility to "stop the clock" to enable both the merging parties and the Commission more time to propose and discuss appropriate remedies.

Lord Brittan closed the first day and ex-Commissioner Karel van Miert opened the second day with personal accounts of their times as Commissioners with responsibility for Competition policy and in particular merger control. Lord Brittan was Commissioner at the time the



Merger Regulation was adopted and first came into force, while Karel Van Miert was Commissioner from 1993 to 1999.

Judicial Review

Guilliano Marengo, Principal Adviser of the Legal Service of the European Commission, explained the role of the European Court of Justice in the development of EC merger control in the very limited number of merger cases that has been appealed so far. *Kali & Salz* is the only judgement where a Commission's decision has actually been annulled.

The importance of this issue of judicial review was shown by the number of times it was raised, both by the speakers and from the floor. Mr Monti stated that a properly functioning judicial review system is essential to ensure that the Commission maintains a high level of quality in its decisions. He also expressed the view that the Court would have all the Commission's support to debate any modifications of current procedures that the Court itself considers necessary to improve its role.

The future of EC Merger Control

The final session provided a forum to present issues for the Merger Review, and was moderated by Jacques Bourgeois. Paul Malric-Smith, Head of Unit in the Merger Task

Force, introduced the main findings of the Commission's 2000 report to the Council on the application of the thresholds in the Merger Regulation which effectively act as the gateway to the Commission's "one-stop-shop" for examining mergers.

This was followed by a series of short presentations and a panel discussion on issues which could form part of the Commission's review of the current merger regime. Ulf Böge, President of the Bundeskartellamt, encouraged the Commission not to focus on the thresholds issue, but rather to concentrate on improving the referral processes between the Commission and Member States. These already exist in the Merger Regulation under Articles 9 and 22. Alec Burnside titled his contribution "Bumps in the level playing field" which set out a critique of the procedural framework and its practical consequences for notifying parties. Morris Tabaksblat, President of the European Round Table of Industrialists, expressed his desire for the Commission to widen its review to look not just at procedural issues, but also substantive ones, such as defining geographical markets. F. Enrique Gonzalez Diaz, Head of Unit in the Merger Task Force, concluded the session with a discussion of some non-threshold related issues which could be reviewed, for example whether the notion of a concentration is sufficiently wide.

Mr Monti stressed that the Review would be all-encompassing and emphasised that, in order for the Merger Review to produce successful and well-balanced solutions, the Commission will rely heavily on active participation and co-operation from all the companies and authorities concerned.

The main challenges for a new decade of EC merger control

In a wide ranging speech that covered all of the issues raised during the conference, Mr Monti went to considerable lengths to address the points raised by the previous speakers. Many of these have been highlighted above. In addition, he stated that the breadth and depth of the discussions showed how much the regime has matured in recent years. The Commissioner emphasised that he believes the EC merger regime is widely respected and that he as Competition Commissioner is committed to ensure that this will continue into the future.

Conclusion

The conference provided an excellent opportunity not just to take a retrospective look at the first ten years of EC merger control, but also to look to the future. The quality of the contributions from the various speakers and other participants has produced a number of initiatives and ideas that will be explored by the Commission over the forthcoming months.

The application of the guidelines on fines: an overview

Miguel Ángel Peña Castellot, *Comp-A-1*

Section I Introduction

After 2½ years of application of the Guidelines on fines¹, and 14 cases² where fines have been

¹ Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation N° 17 and Article 65 (5) of the ECSC Treaty. OJ C9/3 of 14.1.98.

² *Alloy surcharge*. Commission Decision of 21.1.98 relating to a proceeding pursuant to Article 65 of the ECSC Treaty. OJ L100/55 of 1.4.98.

Volkswagen. Commission Decision of 28.1.98 relating to a proceeding pursuant to Article 81 (ex Article 85) of the EC Treaty. OJ L124/60 of 25.4.98.

AAMS. Commission Decision of 17.6.98 relating to a proceeding pursuant to Article 82 (ex Article 86) of the EC Treaty. OJ L252/47 of 12.9.98.

TACA. Commission Decision of 16.9.98 relating to a proceeding pursuant to Articles 81 and 82 (ex Articles 85 and 86) of the EC Treaty. OJ L95/1 of 9.4.99.

British Sugar. Commission Decision of 14.10.98 relating to a proceeding pursuant to Article 81 (ex Article 85) of the EC Treaty. OJ L76/1 of 22.3.99.

Pre-insulated Pipes. Commission Decision of 21.10.98 relating to a proceeding pursuant to Article 81 (ex Article 85) of the EC Treaty. OJ L24 of 30.1.99.

Greek ferries. Commission decision of 9.12.98 relating to a proceeding under Article 81 (ex Article 85) of the EC Treaty. OJ L109/24 of 27.4.98

imposed - including record fines on a single company (Volkswagen) and on a cartel (TACA), it is an appropriate time to give a short overview of all decisions adopted so far³ in order to show how the Guidelines are being applied in practice.

This article tries to do so in the following way. Section II

Virgin-B.A. Commission Decision of 14.7.99 relating to a proceeding pursuant to Article 82 of the EC Treaty. OJ L30/1 of 4.2.00.

World Cup 98. Commission Decision of 20.7.99 relating to a proceeding pursuant to Article 82 of the EC Treaty. OJ L5/55 of 8.1.00

FEG -TU. Commission decision of 26.10.99 relating to a proceeding under Article 81 of the EC Treaty. OJ L39/1 of 14.2.00.

Seamless Steel Tubes. Commission decision of 8.12.99 relating to a proceeding under Article 81 of the EC Treaty (case IV/35.860). Not yet published.

FETTCSA. Commission decision of 16.5.00 relating to a proceeding under Article 81 of the EC Treaty (case IV/34.018). Not yet published.

Amino Acids. Commission decision of 7.6.00 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (case Comp/36.545). Not yet published.

Nathan - Bricolux. Commission decision of 5.7.00 relating to a proceeding pursuant to Article 81 of the EC Treaty (case Comp/36.516). Not yet published.

³ Mid-September 2000.

explains in some detail the steps to be followed in a given case to set the level of fines in accordance with the Guidelines. Section III lists conclusions in the decisions adopted so far on the assessment of the three elements that define "gravity" and deals also briefly with duration. Section IV deals with aggravating and attenuating circumstances. Finally, Section V examines how the excessive duration of the Commission's proceedings is being taken into account in the calculation of fines.

The description that follows is more of a qualitative than a quantitative nature. Hence, final amounts of fines are not included. In addition, this article does not discuss the elements on which the decision to impose a fine in a given case is based (i.e. what makes the Commission go beyond a declaratory negative decision). Finally, this article will be followed by another one dealing with the application of the Leniency Notice⁴.

Section II The methodology of the Guidelines

The calculation of the fine in a decision follows several steps:

A. Gravity

First a starting amount is decided on the basis of the overall

⁴ Commission Notice on the non-imposition or reduction of fines in cartel cases. OJ C207/4 of 18.7.96.



gravity of the infringement. The determination of the overall gravity depends on the nature of the infringement, the geographic market affected and the impact of the infringement on the market. Three non-overlapping ranges for likely starting amounts are defined in the Guidelines: *Minor* (€ 1 000 to € 1 million), *serious* (€ 1 million to € 20 million) and *very serious* (over € 20 million). In cartel cases involving firms of very different sizes, the starting amount could be differentiated taking into account the relative sizes of the cartel members⁵.

Sometimes, in order to achieve a sufficient degree of deterrence, the starting amount corresponding to a multi-product/multinational firm could be increased. This has been done so far by means of applying a multiplying factor to the starting amount for such a firm⁶.

⁵ In order to do so, a limited number of groups are defined in accordance with the distribution of turnovers in the relevant market (usually: large firms, medium firms, small firms). Firms are then put in one of the groups. Finally a series of weightings are first defined - largely on the basis of the relationship between the market share of the largest company in the cartel and a measure of market share representative of the firms belonging to a given group - and then applied to each group.

⁶ This was first applied in the *Pre-insulated pipes* case, where ABB's starting amount was increased by 250%.

B. Duration

Additional amounts are added to the starting amount in view of the duration of the infringement. The Guidelines include three categories of increases regarding the duration (short, medium and long duration). However, in many cases so far, a 10% increase per year has been added for infringements that lasted more than a year.

C. Basic amount

The addition of the starting amount and the increase resulting from duration constitutes the basic amount of the fine per company.

D. Aggravating and attenuating circumstances

The basic amount is then first increased should aggravating circumstances exist and then reduced should attenuating circumstances exist⁷. In practice, a percentage increase, reflecting aggravating circumstances, is applied to the basic amount. Then a percentage decrease, reflecting attenuating circumstances, is deducted from the previous amount. The result is an individual modification to the basic amount of the fine.

⁷ Whereas "gravity" and "duration" refer to the infringement as a whole, "aggravating" and "attenuating" circumstances deal with the specific role performed by each firm participating in the infringement.

E. Leniency

In cartel cases only⁸, the following step is to apply, where there is active and continued co-operation by firms with the Commission in order to establish the infringement, a further percentage reduction in application of any of the sections of the Leniency Notice.

F. Excessive duration of the Commission's proceedings

A further reduction (in accordance with current practice € 100 000 per firm) may be applied where the proceedings in a case have exceeded a period of time that could be considered reasonable and the Commission is responsible for that delay.

G. Adjustment to 10% to overall turnover

This preliminary final amount is lastly compared with the overall turnover of firms in order to verify whether the 10% upper threshold in Article 15(2) of Regulation 17 is not exceeded. If so, the amount is replaced by that corresponding to 10% of overall turnover.

Section III

Assessment of gravity and duration

This section summarises how gravity and duration have been

⁸ Active co-operation with the Commission in other types of cases can be regarded as an attenuating circumstance where appropriate.



assessed in negative decisions with fines. The table shows cases ordered by category of gravity and in chronological order within the category.

The table does not include the case *World Cup 98* in which a symbolic fine of € 1000 was imposed. In doing so the Commission recognised, among other considerations, the importance of security considerations for the

organisation of very important sport events. A symbolic fine was also imposed on Bricolux in the *Nathan-Bricolux* case. The reasons for doing so in the latter case were as follows: the small size of Bricolux; its full co-operation with the Commission (including the submission of pieces of evidence without which the infringement could not have been established); the limitation to one competing distributor of the retaliatory

measures requested of Nathan; and the discretion of the Commission regarding symbolic fines.

The table does not mention duration. As indicated above, in many cases an increase of 10% per year has been applied in those cases where the duration of the infringement exceeded one year.

Assessment of Gravity

Case	Nature	Market size	Impact	Overall Gravity
VW	Particularly serious (obstruction of parallel exports and of cross deliveries within the dealer network)	Italy, but also Germany and Austria	Significant	Very serious
TACA-potential comp.	Very serious abuse	Very serious	Very serious	Very serious
Pre-insulated Pipes	Very serious (cartel)	Substantial part of the EU	Evidence of list price increases	Very serious
Seamless Steel tubes	Very serious (cartel intended to jeopardise the proper functioning of the single market)	Four Member States	The specific impact of the infringement on the market has been limited	Very serious
Amino Acids	Very serious (price fixing, quota allocation cartel)	EEA (actually world-wide)	The cartel had an impact	Very serious
Alloy surcharge	Serious (concerted practice)	Western Europe	Deemed to be considerable	Serious
AAMS	Very serious (abuse)	Serious (Italy)	Serious	Serious
TACA-services contracts	Serious (abuse)	Very serious (more than 1 Member State)	Serious	Serious
British Sugar	Very serious (price cartel)	Serious (UK)	Serious. Commission unable to prove a very serious impact	Serious
Greek ferries	Very serious (price fixing cartel)	Limited part of the EU (Adriatic sea routes)	Limited	Serious
Virgin – BA	Serious (abuse, exclusionary rebate scheme)	UK	Assumed effects on UK economy. Ability of BA to maintain market share despite liberalisation	Serious

FEG-TU.	Horizontal price agreements and collective exclusive dealing arrangement	The Netherlands (or even some regions only)	Raised barriers to entry to the Dutch market	Serious
FETTCSA	Serious (horizontal agreement not to discount)	North Europe – Far East sea routes	Agreement was very short lived. FETTCSA agreement abandoned in 1994	Serious
Nathan-Bricolux	Serious (resale price maintenance and absolute territorial protection)	France and French speaking Belgium	Practice not systematically implemented.	Minor

Section IV

Aggravating and attenuating circumstances

This section describes aggravating and attenuating circumstances applied in negative decisions with fines adopted to date.

Following the entry into force of the Guidelines on fines, aggravating and/or attenuating circumstances have been applied in the following cases: *Alloy Surcharges*, *Volkswagen*, *British Sugar*, *Pre-insulated Pipes*, *Greek ferries*, *FEG-TU*, *Seamless Steel Tubes*, *FETTCSA*, *Amino Acids* and *Nathan-Bricolux*⁹.

A. Aggravating circumstances

The following aggravating circumstances have been applied in the above cases:

A.1 attempts to obstruct the Commission

This circumstance was first applied in the *Pre-insulated Pipes* case, and was part of the global 30% increase imposed on the Henss firm.

In *Greek Ferries*, an increase of 10% was imposed on Minoan for the same reason.

A.2 role of leader/instigator/major player

In the *Alloy Surcharge* case, an increase of 25% was imposed on Usinor in view of the fact that it played a major role in the concerted action. It was that company that made the calculation of the surcharge and sent it - together with the conclusions of the meeting - to all producers involved.

In *British Sugar*, British Sugar was subjected to an increase for being the instigator and driving force behind the infringement. This aggravating circumstance, together with the other two mentioned below, resulted in a 75% increase to that firm's fine. In *Pre-insulated Pipes*, ABB was found to be the instigator/ring leader of the cartel. This aggravating circumstance, together with the other three mentioned below, resulted in a 50% increase to that firm's fine. In the same case, Henss also received an increase for being the first lieutenant to ABB in the enforcement of the cartel.

In *Greek Ferries*, Minoan also received a 25% increase for being the instigator of the cartel. Finally, in the *Amino Acids* case both ADM and Ajinomoto were subjected to a 50% increase for acting as leaders of the lysine cartel.

A.3 retaliatory measures

Volkswagen received a 20% increase resulting from two

⁹ Where possible, the percentages or amounts applied will be mentioned. However, in several cases only global percentages by company are mentioned in the decision, without further differentiation between concrete aggravating or attenuating circumstances.



aggravating circumstances. First, Volkswagen took advantage of its power over its dealers to enforce the measures adopted to impede sales of its cars in Italy to foreigners. Secondly, Volkswagen terminated several dealership contracts and threatened many other dealers.

Furthermore, part of the increase of the original fine imposed on most companies in the *Pre-insulated Pipes* case was due to their active participation in the retaliatory measures and the boycott against Powerpipe.

A.4 other

This category has in fact been used in three of the above cases:

- The second aggravating circumstance in *Volkswagen* was the fact that the company did not put an end to the infringement despite two warning letters sent by the Commission in 1995.
- In *British Sugar*, the fact that British Sugar had violated first Article 82 and then Article 81 in the same market was considered an aggravating circumstance.
- In addition, the fact that British Sugar acted in a manner contrary to the wording in its compliance program resulting from the previous Article 82 case, where the compliance program was considered an attenuating circumstance, was concluded to be a separate aggravating circumstance. As indicated above, the three aggravating circumstances

resulted in a 75% increase of the fine.

- In *Pre-insulated Pipes*, the deliberate continuation of the infringement after the initiation of the Commission proceedings was considered an aggravating circumstance which resulted in a 20% increase for all participating companies.

B. Attenuating circumstances

The following attenuating circumstances have been applied in the cases mentioned above:

B.1 passive role/"follow my leader"

This circumstance was first applied in the *Pre-insulated Pipes* case. Each of Ke-Kelit and Sigma received a 66% reduction of the fine for their minor role in the cartel (together with the fact that their participation was limited to countries - Austria and Italy respectively - where district heating was of a very low importance).

It was also applied in *Greek Ferries* where most companies (apart from the instigator and the two other most active members of the cartel) benefited from a 15% reduction for their passive role.

In *Amino Acids*, Sewon benefited from a 20% reduction of the increase that would otherwise have resulted from the duration of its involvement in the lysine cartel. The Commission accepted that from

a given point in time, the firm changed its behaviour from an active to a passive member of the cartel. That meant in practice that the 40% increase resulting from duration was reduced to 32%.

B.2 non-implementation in practice

In the *Pre-insulated Pipes* case, KWH was granted a 20% reduction for not participating in the retaliatory measures and the boycott against Powerpipe.

B.3 termination of the infringement as soon as the Commission intervenes

This circumstance was used for the first time in *FETTCSA*. All the shipping lines were granted a 20% reduction for terminating the infringement as soon as the Commission sent a warning letter.

All companies participating in the lysine cartel (*Amino Acids*) benefited from a 10% reduction for the early termination of the infringement.

In *Nathan-Bricolux*, Nathan was granted a reduction for modifying its distribution agreements just after it received the statement of objections. This was part of the 40% reduction that the company was granted.

B.4 existence of reasonable doubts on whether the conduct is an infringement

In *Greek Ferries*, all companies were granted a 15% discount for the confusion created by the Greek Government, which, for domestic ferry routes within Greece, had been promoting agreements similar to the cartel agreement (relating to Italy/Greece ferry services) that was prohibited in the decision.

B.5 effective co-operation with the Commission outside the scope of the Leniency Notice

In the *Nathan-Bricolux*¹⁰ case, the Commission reduced the fine imposed on Nathan because the firm co-operated with the Commission by providing, at the Commission's request, fundamental pieces of evidence without which the infringement could not have been established. The same co-operation was provided by Bricolux, and that factor was one of the considerations that led the Commission to impose a symbolic fine on that firm.

B.6 Other

ABB was allowed a € 5 million reduction of its fine in view of the monetary compensation it had already paid to Powerpipe. Furthermore, the critical situation of a particular sector

has been used twice - in cases concerning steel - since the entry into force of the Guidelines:

- In the *Alloy Surcharge* case, the very critical situation of the stainless steel sector justified a reduction of the basic amount of 10% to all other producers involved.
- In the *Seamless steel tubes* case, the Commission acknowledged that the steel pipe and tube industry had been in crisis for a long time. And that since 1991 in particular, the situation in the sector had deteriorated, which, combined with the growing influx of imports, had resulted in capacity reductions and plant closures. These considerations warranted a reduction of 10% in the basic amounts for all the companies involved.

Section V

The excessive duration of the Commission's proceedings

The long duration of the Commission's proceedings is not a reason not to impose a fine, provided that the lapse of time does not exceed the limitation period for competition proceedings laid down by Council Regulation 1988/74.¹¹ Article 1 of the Regulation provides that the Commission's power to impose fines is subject to a five-year limitation period in respect of Articles 81(1) and 82 of the Treaty. The period begins to run on the day on which the

infringement is committed or, in the case of continuing or repeated infringements, on the day on which it ends. It may, however, be interrupted or suspended, pursuant to Article 2 or 3 respectively of the Regulation. Under Article 2(3) of the Regulation, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed.

However, the long duration of the Commission's proceedings, when such a delay is the responsibility of the Commission, has been used to reduce fines. In the *FEFC* decision of 1994, the first decision applying Regulation 1017/68 to the members of a liner shipping conference, the Commission did consider the excessive duration of the proceedings in that case as one of the elements on which it based the imposition of symbolic fines¹² of ECU 10 000 for each participant, despite the very serious nature and long duration of the infringement in that case. Subsequently, it has become part of the established case-law of the Court of Justice and of the Court of First Instance that the Commission must act within a reasonable time in adopting decisions following administra-

¹⁰ Fine imposed on Nathan. Bricolux received a symbolic fine

¹¹ OJ L319, 19.11.1974, p.1.

¹² This amount cannot be considered "symbolic" under the Guidelines, which now limit the "symbolic" fine to an amount of € 1,000.



tive proceedings relating to competition policy¹³.

Since the entry into force of the Guidelines, the long duration of the Commission's proceedings has been applied in two cases (*FEG-TU* and *FETTCSA*). In both cases, the firms involved were granted a reduction of € 100 000 each.

Section VI

Conclusions

The fact that the Guidelines on fines are working in a satisfactory way to establish the amount of fines was recently confirmed by the judgment of 6 July 2000 by the Court of First Instance on the *Volkswagen* case, which basically supported the Commission findings and conclusions (leaving aside the fact that the Commission did not provide enough evidence to support the alleged duration of the infringement). This judgement was the first to deal with fines set under the Guidelines. It is the first in a series that are due in the next 12 months.

¹³ See the judgments of the Court of Justice in Case C-185/95 P *Baustahlgewebe* [1998] ECR I-8485 and of the Court of First Instance in Joined Cases T-213/95 and T-18/96 *SCK and FNK* [1997] ECR II-1739, paragraph 56.

OPINION AND COMMENTS

In this section DG COMP officials outline developments in community competition procedures. It is important to recognise that the opinions put forward in this section are the personal views of the officials concerned. They have not been adopted or in any way approved by the Commission and should not be relied upon as a statement of the Commission's or DG COMP's views.

Crises bancaires : un bilan de l'application des règles de concurrence en matière d'aides d'Etat. Leçons de la crise du Crédit Lyonnais

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ET C. de LA ROCHEFORDIERE – DG Comp C-1

Introduction

Les années 1990 se caractérisent par une modification profonde pour le secteur bancaire européen. A la suite de l'adoption des directives européennes en matière bancaire¹⁴ le cadre législatif et réglementaire des systèmes bancaires nationaux subit des changements importants : les séparations institutionnelles entre les établissements et les contraintes opérationnelles tombent progressivement, les marchés se décloisonnent, le progrès technologique ouvre des nouvelles possibilités commerciales, les équilibres consolidés et les positions acquises sont bousculés, les pressions concurrentielles augmentent partout en Europe

avec l'achèvement du marché unique des capitaux.

L'exigence d'une restructuration de chaque banque et de l'ensemble du secteur est rendue plus urgente par la crise économique du début des années 1990. Le retard pris par certains établissements, notamment les banques publiques, dans leur adaptation au nouvel environnement bancaire, a des conséquences parfois dramatiques. Certains Etats membres¹⁵, comme la France et l'Italie, vivent des crises aiguës, pour un ensemble de causes, notamment l'éclatement de bulles spéculatives et l'influence des pouvoirs publics sur le secteur bancaire, impliquant un certain laxisme de la gestion des établissements bancaires publics dû à la garantie implicite de l'Etat, prêteur en dernier ressort.

La Commission, confrontée à ces crises, doit alors créer une jurisprudence sur l'application

de l'article 87 (anciennement 92) dans de telles situations. L'analyse qui suit retrace brièvement la ligne qu'a progressivement définie la Commission dans le traitement de ces crises, principalement celle du Crédit Lyonnais. Elle se fonde sur les décisions d'aides d'Etat en matière bancaire adoptées par la Commission dans la dernière décennie. Il s'agit d'une période suffisamment longue, caractérisée par un nombre significatif de crises bancaires accompagnées par des aides d'Etat, nous permettant de tirer quelques enseignements utiles. Ce bilan ne saurait être exhaustif et ne traite que les aspects les plus importants. D'autres aspects complexes ou spécifiques, tels que le caractère d'aides ou, le cas échéant, la compatibilité des mécanismes de fonds de garantie des dépôts avec les règles du traité, ne peuvent pas être examinés dans le cadre de cet article et devront éventuellement par la suite faire l'objet d'analyses séparées.

Les principales crises

La Commission a examiné sur la période 1990-1999 environ une dizaine de crises bancaires ayant reçu un support externe. Les cas principaux sont repris dans le tableau suivant:

¹⁴ Il s'agit d'un ensemble très large de directives d'harmonisation. Les plus importantes, pour ce qui nous concerne, sont probablement les directives n° 89/299 du 17 avril 1989, sur les fonds propres des établissements de crédit, n° 89/647 du 18 décembre 1989 sur un ratio de solvabilité pour les établissements de crédit, et n° 89/646 du 15 décembre 1989, dite « deuxième directive de coordination ».

¹⁵ D'autres Etats membres, comme les pays nordiques, ont vécu des crises importantes, mais avant leur entrée dans l'union européenne.



➤ OPINION AND COMMENTS

Tableau 1 : Cas principaux d'aides d'Etat examinés par la Commission (1990-1999).

Banque	Date (¹)	Total du bilan (€ mln)	Aide (€ mln)	Forme du soutien
Banesto (ES)	1993 1994	42.000	Pas d'aide	Augmentation de capital +prêt du Fonds de garantie des dépôts
Comptoir des Entrepreneurs (FR)	1993 1995	10.000	2.300	Augmentation de capital et défaillance
Crédit Lyonnais I (FR)	1994 1995	300.000	6.800	Augmentation de capital et défaillance
Crédit Lyonnais II (FR)	1996 1996		600	Modification de la défaillance – extension des pertes de la défaillance
Crédit Lyonnais III (FR)	1997 1998		8.100-14.900	Extension des pertes de la défaillance
GAN – CIC (FR)	1996 1997	100.000	3.600	Augmentation de capital et garantie
Société Marseillaise de Crédit (FR)	1993 1998	3.500	1.000	Augmentations de capital
SDBO (FR)	1996 1998	3.000	35	Augmentation de capital
Crédit Foncier de France (FR)	1996 1999	58.000	2.400	Augmentation de capital et garantie
Banco di Napoli (IT)	1996 1998	65.000	1.100-7.400	Augmentation de capital et défaillance
Banco di Sicilia – Sicilcassa (IT)	1997 1999	31.000	2.400	Augmentation de capital + couverture pertes de liquidation

(¹) La première date est celle de la mise en place du plan d'aides, la seconde celle de la décision de la Commission.

La plupart des cas examinés concernent des établissements publics (Crédit Lyonnais, Société Marseillaise de Crédit, GAN, Comptoir des Entrepreneurs) ou tombant sous l'influence des pouvoirs publics (CFF, Banco di Napoli et Banco di Sicilia). La Commission a été également amenée à évaluer le sauvetage de la banque privée Banesto par le Fonds de Garantie des Dépôts espagnol, mais elle a

conclu que la banque n'avait pas reçu d'aides d'Etat¹⁶.

Dans un certain nombre de cas, concernant *de facto* toujours des banques privées, l'institution en difficulté est laissée partir en faillite¹⁷ ; dans d'autres cas¹⁸,

celle-ci reçoit un soutien à des conditions acceptables pour un investisseur privé opérant dans une économie de marché¹⁹. Par

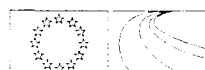
de Garantie des Dépôts. Ce cas représente un point de comparaison important pour la Commission, puisqu'il montre qu'il est possible d'éviter des crises bancaires majeures sans avoir nécessairement recours à des aides d'Etat.

¹⁶ Communiqué de presse IP/94/1226 du 15 décembre, 1994.

¹⁷ Voir par exemple Barings au Royaume Uni et la Banque Pallas Stern en France.

¹⁸ Voir par exemple en Espagne le sauvetage de Banesto par le Fonds

¹⁹ La définition d'aide d'Etat implique que l'entreprise reçoit un soutien qu'un investisseur privé n'aurait jamais octroyé en raison de ses perspectives de rentabilité



contre, face aux crises bancaires, le recours aux aides d'Etat, pour sauver des institutions défaillantes et pour en accompagner la restructuration est la solution la plus fréquente dans le cas de crises touchant des banques publiques. Il n'est toutefois pas toujours inévitable. Les cas tombant sous le coup de l'article 87 du Traité ne concernent que des banques auxquelles l'Etat octroie un avantage distorsif pour la concurrence.

Dans de telles circonstances, les critères appliqués par la Commission sont indiqués dans les lignes directrices sur les aides au sauvetage et à la restructuration des entreprises en difficulté²⁰. Il s'agit, notamment, d'assurer que l'aide soit limitée au strict nécessaire, subordonnée à la réalisation d'un plan de restructuration en mesure d'assurer le retour à la viabilité dans un laps de temps raisonnable, et à la fourniture de contreparties suffisantes pour compenser les concurrents pour les distorsions causées par l'aide.

1.0.0.0. Le cas Crédit Lyonnais

Le cas du Crédit Lyonnais est emblématique non seulement par sa gravité, puisque l'aide à la banque, de plus de 100 milliards de francs français, aura dépassé

tous les records en la matière dans la Communauté, mais aussi par la complexité du problème posé et la combinaison d'aides de sauvetage et d'aides à la restructuration. Il a, plus que tout autre, contraint la Commission à mieux définir sa politique en matière d'aides dans ce secteur, notamment lors de crises bancaires brutales et imprévues. Aussi constate-t-on, à la lecture des décisions sur le Crédit Lyonnais adoptées par la Commission en 1995 et 1998, qu'elle fait une large part à des considérations à caractère général sur les justifications possibles des interventions publiques dans les crises bancaires, leurs modalités et leurs effets distorsifs pour le reste du secteur bancaire. Ces décisions constituent à bien des égards des textes ayant valeur de lignes directrices en matière d'aides au secteur bancaire, dans les cas de restructurations de banques en difficulté.

Le Crédit Lyonnais est, à la fin de 1993, le premier groupe bancaire européen en termes d'actif total (presque 2.000 milliards de FF). Il compte alors plus de 71.000 employés, 900 agences en Europe hors France et 800 dans le reste du monde. Son actionnaire majoritaire est l'Etat français, directement ou indirectement par l'intermédiaire du groupe public Thomson et de la Caisse des Dépôts et Consignations.

A la suite de pertes importantes enregistrées en 1992 et en 1993, risquant de provoquer une insuffisance de fonds propres au regard des exigences réglementaires prudentielles

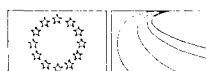
européennes²¹, l'Etat décide dans un premier temps de procéder à une augmentation du capital de 4,9 milliards de francs, effective fin 1994, puis de prendre à sa charge les provisions pour risques estimées à environ 42,7 milliards de francs sur des actifs immobiliers non performants transférés dans une société spécifique de cantonnement. Toutefois, la crise est à cette époque gravement sous-estimée : elle n'est pas due seulement aux pertes très importantes de la banque sur ses actifs immobiliers, mais aussi aux pertes considérables générées par les prises de participations hasardeuses prises par la banque dans tous les secteurs de l'économie à la fin des années 1980 et au tournant des années 1990. De plus, l'activité de la banque en France, en raison de la lourdeur des frais généraux, n'est pas rentable et fait preuve de sa vulnérabilité face au retournement de conjoncture de 1992-1993, qui provoque la première récession dans l'hexagone depuis 1945.

Début 1995, il apparaît que les pertes ont été très sous-estimées, que les nouvelles provisions nécessaires et les pertes qui s'ensuivront mettent en péril la solvabilité de la banque : en l'absence d'aides, il n'y aurait alors pas d'autre alternative que la liquidation de la banque, option unanimement écartée par les responsables des pouvoirs publics

insuffisante ou de ses risques trop élevés.

²⁰ Voir JO C 368 du 23.12.1994 et, pour la dernière version, JO C 288 of 09.10.1999.

²¹ L'insuffisance des provisions passées pour l'exercice 1992 fait aujourd'hui l'objet de procédures pour présentation de faux bilan instruites par la justice française.

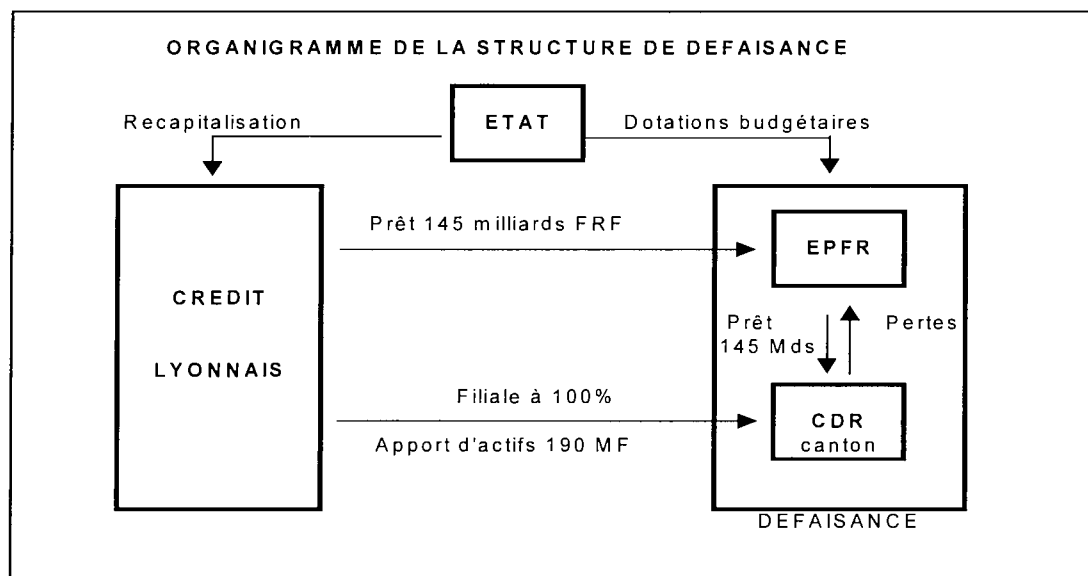


➤ OPINION AND COMMENTS

français. L'Etat met alors en place un nouveau plan de redressement, avec la création d'une autre structure spécifique dite de défaillance, composée d'une part d'une structure de cantonnement, le Consortium de Réalisation (CDR), destinée à reprendre les

actifs compromis du Crédit Lyonnais, y inclus les actifs immobiliers déjà mentionnés, et d'autre part d'une holding, la SPBI, ensuite transformée en l'Etablissement Public de Financement et de Participation (EPFR), chargée d'assurer le

financement de la défaillance par des fonds d'origine budgétaires. Ainsi, 190 milliards d'actifs « douteux » du Crédit Lyonnais sont sortis du bilan de la banque avec 55 milliards de francs de passifs qui leur sont attachés.



Pour lui permettre d'acheter les actifs au Crédit Lyonnais, le CDR reçoit un "prêt participatif" de la part de l'EPFR, qui à son tour se refinance auprès du Crédit Lyonnais à travers un emprunt à concurrence d'un montant maximum de 145 milliards de francs. Par le mécanisme du prêt participatif les pertes du CDR ainsi que le coût du portage des actifs sont imputés à la charge de l'EPFR, donc en dernier ressort de l'Etat. En contrepartie il est alors prévu que l'EPFR bénéficie du produit d'une « clause de retour à meilleure fortune » sur les résultats futurs de la banque. Le tableau ci-dessus donne une

représentation simplifiée du schéma de la défaillance.

La Commission conduit début 1995 une première investigation sur les aides au Crédit Lyonnais. Les autorités françaises nient que leur intervention constitue une aide d'Etat, parce que le plan en permettrait l'autofinancement. La Commission n'étant pas du même avis, elle exige la présentation d'un plan de restructuration du Crédit Lyonnais. Les autorités présentent finalement un plan portant sur plusieurs mesures de recentrage stratégique, de cession de filiales, de réduction des coûts, de maîtrise et contrôle des risques.

Ces mesures devaient permettre au Crédit Lyonnais d'afficher des résultats positifs à partir de 1995 et une rentabilité sur les fonds propres supérieure à 12% à la fin de 1999. Vu l'importance des coûts du système pour l'Etat globalement estimés à 45 milliards de francs, la Commission exige une réduction avant fin 1998 d'au moins 35% de la présence commerciale de la banque à l'étranger. Les autorités françaises s'y engagent, et prévoient en particulier une réduction de la présence commerciale du Crédit Lyonnais hors de France en Europe de 50% en termes de bilan.

Compte tenu de ces engagements, ce premier épisode de la crise se conclut sur une décision favorable de la Commission, qui décide²² le 26 juillet 1995 d'approuver sous condition les aides octroyées par l'Etat français au Crédit Lyonnais en 1994 et 1995 en les considérant comme compatibles avec le marché commun²³. La décision de la Commission de 1995 prévoit que si les coûts du système sont dépassés, il y aura lieu de réexaminer l'importance de la réduction de la présence commerciale du Crédit Lyonnais, disposition qui prendra par la suite un caractère crucial. Afin d'éviter des conflits d'intérêt dans la gestion des actifs cantonnés, elle impose une stricte séparation entre la gestion de la banque et du CDR, qui est alors une filiale à 100% du Crédit Lyonnais, non consolidée dans les comptes de la banque parce que ses pertes sont imputées à l'Etat : cette coupure chirurgicale fera par la suite l'objet de nombreuses critiques en raison du manque de préparation des nouvelles équipes du CDR et de la perte de mémoire institutionnelle sur les actifs cantonnés qui résulte de cette séparation.

Dès l'année qui suit, le redressement de la banque s'avère plus difficile que prévu, et les pertes très sous-estimées. Mi-septembre 1996, les autorités

françaises notifient « en catastrophe » à la Commission de nouvelles aides d'urgence en faveur du CL, pour un montant de presque 4 milliards de francs français, en lui demandant de les approuver en quelques jours pour que la banque puisse rapidement afficher des comptes bénéficiaires et ainsi rassurer les marchés financiers. Sans de telles aides, une nouvelle dégradation de la notation de la banque par les agences de rating semble inévitable. Une telle dégradation apparaît redoutable et peut provoquer rapidement la défiance des marchés et l'insolvabilité de la banque. Des conséquences négatives pour d'autres établissements financiers français ne sont pas à exclure, et le spectre d'une crise systémique est évoqué.

Les mesures envisagées consistent en un rehaussement de la rémunération du prêt du Crédit Lyonnais à l'EPFR et en l'abandon d'une partie du plan de restructuration de 1995 qui prévoyait la souscription de 10 milliards d'obligations coupon-zéro par l'EPFR. En fait, face aux résultats moins bons que prévus sur les autres activités, le mécanisme de rémunération du prêt à l'EPFR fait peser sur le Crédit Lyonnais une charge nette importante, d'un montant de plusieurs milliards de francs par an. Cette « punition de la banque » en vue de la faire contribuer au coût du sauvetage, voulue par le ministère des finances, et qui comporte un élément d'incertitude contingent à l'évolution des taux, apparaît *a posteriori* comme une erreur

majeure du plan de sauvetage de la banque de 1995.

Compte tenu des particularités du secteur bancaire ainsi que la situation du Crédit Lyonnais, la Commission décide dans l'urgence, le 25 septembre 1996, quelques jours après la notification des aides de sauvetage et sous une pression unique dans des décisions de ce type, que les aides d'urgence en faveur de la banque peuvent être déclarées compatibles avec le marché commun car elles respectent les principes fondamentaux de l'encadrement pour les aides au sauvetage en ce qu'elles n'ont d'autre effet que le maintien du *status quo ante*²⁴. Bien que les procédures aient été respectées, et la Commission se soit assurée de l'avis formel du Gouverneur de la Banque de France sur l'urgence, la nécessité et la pertinence des mesures d'urgence en faveur du Crédit Lyonnais, les conditions quasi chaotiques dans lesquelles il faut prendre cette décision, sans que les autorités aient préalablement informé la Commission alors qu'elles étaient au courant depuis le printemps de la même année de la gravité de la situation, laisseront des traces : elles ne seront pas sans conséquences sur les suites de l'instruction de l'affaire Crédit Lyonnais à la Commission et justifient la fermeté et l'impatience croissante du commissaire Van Miert sur cette affaire.

Commence alors le troisième et dernier acte de l'affaire Crédit

²² J.O. L 308 du 21.12.1995, p. 92.

²³ Sur la base de l'article 87 (auparavant article 92), paragraphe 3, lettre c) du Traité CE, et notamment avec les lignes directrices communautaires pour les aides d'Etat au sauvetage et à la restructuration des entreprises en difficulté.

²⁴ J.O. C 390 du 24.12.1996, p. 7.



Lyonnais : en même temps qu'elle approuve les mesures de sauvetage, la Commission décide de rouvrir le dossier²⁵ pour l'extension des mêmes mesures au-delà de 1996, étant donné leur effet sur la restructuration du Crédit Lyonnais, en se réservant le droit d'examiner la compatibilité de toute mesure d'aide et de restructuration en faveur du Crédit Lyonnais, y compris celles qui avaient fondé la décision de 1995. Trois problèmes majeurs sont alors posés : l'évaluation des aides, l'analyse du nouveau plan de viabilité de l'entreprise et la recherche de contreparties adéquates face au montant des aides.

L'évaluation exacte des aides est difficile dans le cadre de la mise en place d'un système de défaisance, qui par sa nature a pour but de reporter la charge budgétaire en étalant sur plusieurs années les moins-values et les pertes dont une partie n'est même pas chiffrable. De plus, alors que la procédure est en cours et que le nouveau plan de restructuration n'est toujours pas notifié à la Commission, on apprend au printemps 1997 que les pertes du CDR, initialement prévues à 60 milliards de francs dans le plan de 1995, seront finalement de l'ordre de 100 milliards de francs : d'un seul coup les aides font un bond de 40 milliards de francs, toutes les prévisions les plus pessimistes sont dépassées, et ce alors qu'un précédent ministre de l'économie, M. Alphandéry, avait annoncé

que le sauvetage du Crédit Lyonnais ne coûterait « pas un sou » au contribuable.

La Commission arrive finalement en 1998 à la conclusion que les aides supplémentaires en faveur du Crédit Lyonnais ne peuvent être estimées qu'à l'aide d'une très large fourchette, d'environ 53-98 milliards de francs en valeur actualisée, qui s'ajoutent aux 45 milliards approuvés en 1995 et aux 4 milliards approuvés en 1996. La largeur de cette fourchette est due au caractère incertain du montant des pertes *in fine* à la charge du CDR, sur lequel les autorités françaises n'ont pas su prendre aucun engagement de plafonnement (la garantie de l'Etat sur l'EPFR est illimitée). Elle a aussi pour la Commission un caractère conservatoire pour éviter, comme en 1995, une sous-estimation, et faire en sorte que cette décision sur le Crédit Lyonnais soit bien la dernière qu'elle ait à prendre. Les estimations de la Commission sont vivement contestées par les autorités françaises, comme en témoigne le texte de la décision²⁶ de mai 1998. Une estimation élevée à titre conservatoire (c'est le rôle de la valeur supérieure de la fourchette retenue par la Commission) a toutefois l'avantage de donner une sécurité juridique aux aides accordées à la banque. Sinon chaque dépassement du montant approuvé implique *ex post* une réouverture de la procédure. Un

élément très important vient toutefois réduire la valeur des aides estimée par la Commission : compte tenu du schéma très particulier de la défaisance qui alloue à l'EPFR les revenus prévisibles de la privatisation de la banque, la valeur de la participation de l'Etat au sein du Crédit Lyonnais est prise en déduction du montant brut des aides.

En deuxième lieu, il faut dans le courant du deuxième semestre 1997 procéder à une évaluation particulièrement attentive du plan de restructuration et des perspectives de viabilité de la banque : les autorités françaises ont en effet, après de nombreuses tergiversations, enfin notifié en juillet 1997 le plan demandé en septembre 1996 par la Commission. La Commission décide de s'appuyer dans son analyse sur les conseils d'une banque d'affaires internationale, Lehman Brothers, qui est chargée d'examiner le plan de restructuration présenté par les autorités françaises, en ce qui concerne la viabilité de la banque et les contreparties possibles aux aides. La banque d'affaires confirme fin 1997 que le redressement du Crédit Lyonnais est possible et fournit une estimation révisée de la rentabilité attendue de la banque compte tenu du plan d'aides. Sur cette base, la Commission considérera par la suite qu'une partie des aides préconisées par les autorités françaises n'est pas strictement nécessaire et a, par conséquent, limitera la « neutralisation » voulue par les autorités françaises

²⁵ la procédure prévue à l'article 88 (auparavant article 93) du Traité

²⁶ Cf JO L 221 du 8.8.1998, section 7.

des effets financiers liés au prêt du Crédit Lyonnais à l'EPFR.

Finalement, la Commission recherche, face à des aides si importantes, des contreparties significatives – tout en s'assurant qu'elles ne mettent pas en péril la viabilité de l'entreprise – destinées à apporter aux concurrents de l'entreprise aidée une compensation atténuant les effets distorsifs des aides. Il s'agira fin 1997 et début 1998 du point d'achoppement principal d'un accord sur le nouveau plan. La Commission lors des discussions avec les autorités françaises considère alors en première analyse que la totalité des activités du Crédit Lyonnais en Europe (hors de France), soit 620 milliards de francs, doit être cédée ou fermée au titre de toutes les aides reçues par le Crédit Lyonnais. Ce montant, qui inclut les cessions de 310 milliards de francs imposées au Crédit Lyonnais au titre de la décision de 1995, se traduit par une réduction de plus du tiers du bilan du Crédit Lyonnais, tel qu'il était évalué au 31 décembre 1994. Il est finalement convenu dans la décision du 20 mai 1998 que, bien que l'essentiel du réseau européen de la banque de détail doive être cédé, le Crédit Lyonnais pourra cependant garder ses activités de marché (Londres et Francfort) et ses activités de gestion privée (Suisse et Luxembourg). A la place, les autorités françaises prennent des engagements de cessions et fermetures en France et dans le reste du monde, pour un montant équivalent. Ce

processus de réduction du bilan de la banque est par la suite complètement mis en œuvre dans les deux années qui suivent

Un effort supplémentaire de la banque sur son réseau en France est demandé en vue de libérer des parts de marché pour les concurrents dans l'hexagone, plus particulièrement touchés par les distorsions de concurrence provoquées par les aides. Le plan de restructuration présenté par les autorités françaises en juillet 1997 impliquait une réduction à 2.146 en l'an 2000 du nombre des points de vente de la banque en France, soit une réduction de 6,6% par rapport au nombre de points de vente de 1996. La Commission finit par obtenir une réduction supplémentaire de presque 296 points de vente, correspondant à une réduction totale du réseau d'agences du Crédit Lyonnais en France de l'ordre de 20% par rapport au niveau de 1996.

Afin de maintenir un effet de bridage sur le CL, plusieurs mesures sont également prévues, notamment le plafonnement à 3,2% par an de la croissance du bilan consolidé (à périmètre constant) du CL entre la fin de l'année 1998 et la fin de l'année 2001²⁷.

Enfin, les autorités françaises s'engagent à privatiser la banque : la Commission n'a pas fait de la privatisation un préalable aux discussions qu'elle a eues avec les autorités, mais

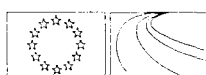
²⁷ J.O. L 221 du 8.8.1998.

considère dans sa décision de mai 1998 qu'il s'agit d'une mesure importante pour mettre fin aux rapports incestueux entre la banque et les pouvoirs publics, s'étant traduits par une garantie *de facto* de toute le bilan de la banque aux frais de l'Etat et donc des contribuables. A la suite de la décision, la procédure de privatisation du CL est lancée début 1999. Les autorités françaises annoncent le 27 mai 1999 la composition du noyau dur : Crédit Agricole (10%), AGF (6%), AXA (5.5%), Commerzbank (4%), BBV (3.7%) Banca Intesa (2.7%). Le placement sur le marché d'environ 50% du capital est achevé début juillet 1999 avec trois mois d'avance sur la limite prévue par les engagements de la France. La souscription du titre rencontre un grand succès, 3,4 millions de particuliers s'étant portés acquéreurs. En 1999, la banque affiche un bénéfice net de 553 millions d'euro et un taux de retour sur fonds propres de 10%.

Ainsi prend fin la plus grande crise bancaire de l'histoire de la Communauté.

1.0.0.1. L'application aux banques des règles sur les aides d'Etat

L'application aux établissements de crédit du droit de concurrence concernant les aides d'Etat a été au départ influencée par ce qui, à tort ou à raison, fait considérer le secteur bancaire comme différent des autres. Longuement réglementé dans chaque détail,



peu exposé à la concurrence internationale, utilisé comme instrument de politique économique, le secteur bancaire européen n'a pas connu avant les années 1990 de crises majeures ayant un impact au niveau communautaire. L'article 87 du Traité a été par conséquent appliqué très rarement. La libéralisation des mouvements des capitaux, les nouvelles règles prudentielles et les progrès technologiques ont eu pour effet d'augmenter considérablement l'impact distorsif sur la concurrence d'une aide à une banque, même de taille modeste. Les crises des années 1990 sont un test décisif pour la politique de la Commission en matière d'aides d'Etat, mais aussi vis-à-vis du secteur bancaire. A cette fin, le Commissaire Van Miert décide en 1994 de constituer un groupe de « Sages », de trois hauts dirigeants de banques centrales, pour examiner les problèmes des crises bancaires, leur impact sur le système économique et l'application des règles de concurrence aux établissements de crédit, notamment quand ils traversent une crise mettant en cause leur survie. Les « Sages » soulignent que les règles de concurrence telles qu'elles sont appliquées par la Commission dans d'autres secteurs peuvent s'appliquer aux établissements de crédit, tout en tenant compte des éléments spécifiques de ce secteur et notamment du risque d'un effet de contagion que la crise d'une banque peut avoir pour les autres établissements financiers. La Commission, sur cette base,

considère qu'en principe les entreprises bancaires doivent être regardées comme des entreprises comme les autres, et la politique de concurrence à leur égard banalisée. De ce point de vue les différentes décisions individuelles prises par la Commission ont un caractère didactique, car elles exposent l'évolution de la politique de l'institution à l'égard des crises bancaires et des méthodes envisagées pour les résoudre.

On notera d'abord que la Commission ne nie jamais les particularités du secteur bancaire, mais qu'elle considère que ces mêmes particularités ont pour conséquence d'augmenter le niveau distorsif des aides et donc de rendre plus important une application stricte des règles de concurrence. En effet, dans le secteur bancaire les conséquences d'un comportement fautif ou trop risqué d'un établissement ne se manifestent comptablement qu'après un certain laps de temps, laissant ainsi à la banque la possibilité de poursuivre des politiques hasardeuses pendant une assez longue période²⁸. Les distorsions sont plus aiguës du fait que la nature particulière d'une institution financière de taille importante peut rendre une liquidation plus difficile, voire impossible (argument connu comme « too big to fail ») en raison des remous que créerait une telle liquidation sur les marchés. L'asymétrie des

conditions d'entrée et de sortie du secteur bancaire qui en résulte est de nature à provoquer un encombrement artificiel du secteur, avec des pressions accrues sur les marges et la rentabilité des établissements sains.

Pour ces raisons, il est essentiel que les aides à une banque en difficulté soient conditionnées à des mesures de restructuration radicales, ayant pour but à la fois le redressement de l'entreprise et l'adaptation de son système de « corporate governance ». A cet égard il est nécessaire que les actionnaires supportent les conséquences financières de la crise, qu'il y ait un changement du management de l'entreprise, de son système de contrôle, et dans bien des cas de sa propriété. En outre, des contreparties particulièrement importantes sont nécessaires pour compenser les concurrents des effets distorsifs accrus des aides.

L'ampleur unique des pertes occasionnées par le sauvetage du Crédit Lyonnais s'explique en partie par la carence des moyens de contrôle de l'Etat actionnaire sur l'entreprise et le retard avec lequel les premières mesures importantes de restructuration ont été prises. Ainsi que la Commission l'a noté dans sa décision de 1998, cette carence de gouvernement d'entreprise a été accentuée par la « *confusion des rôles de l'Etat actionnaire, de l'Etat entrepreneur, de l'Etat providence et de l'Etat régulateur, confusion qui a conduit l'Etat actionnaire à laisser dégénérer une situation* ».

²⁸ On notera que le cycle des crises bancaires est toujours décalé de quelques années par rapport au cycle économique général.

d'une gravité inédite, contraire à ses intérêts patrimoniaux ». Dans le cas d'espèce, le soutien implicite ou explicite de l'Etat a eu pour effet de permettre au Crédit Lyonnais de se lancer dans la politique hasardeuse et à entreprendre avec retard et sans la détermination nécessaire son redressement. Une telle protection est d'autant plus grave qu'elle se répercute en chaîne sur le comportement des acteurs : elle limite l'incitation normale pour les créanciers à contrôler le comportement de leurs débiteurs, permettant ainsi aux établissements de ne plus être soumis au contrôle et à la sanction normale des marchés et ayant pour conséquence *"d'inciter à une mauvaise gestion des établissements de crédit"* ²⁹. L'ampleur de la crise du Crédit Lyonnais s'explique certes par la convergence entre la crise de l'immobilier, la crise de conjoncture de 1992-93 et l'apparition des pertes sur les participations de la banque : mais, à la racine, elle est largement imputable à cet effet pervers ou aléa moral (« moral hazard »). Les agences de rating elles-mêmes ont en permanence tenu compte de la garantie implicite de l'Etat sur la banque pour ne pas dégrader encore plus sa notation, qui, si tel avait été le cas, aurait été déclassée en « speculative grade », ce qui veut dire que le

Crédit Lyonnais aurait immédiatement fait face à une crise d'illiquidité en raison de la défiance des marchés.

Il convient également de souligner que l'effet distorsif des aides sur la concurrence ne concerne pas seulement la politique passée de l'établissement bénéficiaire des aides, mais peut également créer des anticipations sur l'avenir. La répétition de l'aide peut générer un réel laxisme et des attentes d'aides futures par le "management" de la banque, ce qui peut produire de nouveaux effets distorsifs sur la concurrence : alors qu'il était évident que la restructuration du réseau du Crédit Lyonnais en France était très insuffisante, que ses frais généraux étaient beaucoup trop élevés pour la rendre compétitive, et que des mesures beaucoup plus radicales auraient été nécessaires, il semble que personne ne doutait au sein de la banque en 1996, lors qu'il est apparu que des aides supplémentaires seraient nécessaires, que « l'Etat ferait son devoir », et les faits ont donné raison à de telles attentes. Avec la peur d'un conflit social, il s'agit de l'explication principale de l'attentisme du management de la banque face aux mesures qui s'imposaient pour rétablir rapidement la rentabilité de l'exploitation en France.

Toute solution durable pour le système bancaire public, en France comme en Italie, devait donc passer par une réforme du système d'ensemble de

gouvernement d'entreprise ("corporate governance") des établissements en crise et par une solution au problème d'aléa moral provoqué par le soutien en dernier ressort de l'Etat. Dans la plupart des cas, en France comme en Italie, la Commission a considéré que les engagements de privatisation et de contraction drastique de la taille des établissements pris par le Gouvernement apportaient une solution durable aux déficiences du gouvernement d'entreprise constatées dans le passé.

Dans sa décision de mai 1998 sur le Crédit Lyonnais, la Commission indique que la politique qu'elle préconise pour la résolution des crises bancaires vise à accroître la responsabilité des dirigeants des banques, publiques comme privées. Pour cela, indique-t-elle, « *il importe non seulement que les autorités responsables fassent clairement et publiquement savoir que les établissements de crédit seront normalement soumis aux sanctions du marché et que les banques, pas plus que les autres entreprises, ne sont pas à l'abri d'une liquidation (...), mais aussi que l'Etat actionnaire agisse en conséquence lors du traitement des crises bancaires, et sans opérer de discrimination entre les banques publiques et les banques privées. Une telle politique doit être accompagnée de mesures de protection des petits déposants par des instruments tels que les fonds de garantie des dépôts* » ³⁰.

²⁹ Comme affirmé par le Parlement européen et le Conseil de l'Union européenne dans la directive 94/19/CE (J.O. L 135 du 31.5.1994, p. 5) du 30 mai 1994, relative aux systèmes de garantie des dépôts.

³⁰ La directive 94/14/CE sur les systèmes de garantie des dépôts



Elle requiert aussi des stratégies d'accompagnement de processus de liquidation ordonnée des établissements bancaires défaillants, visant à circonscrire les crises et à éviter leur propagation au niveau du reste du secteur financier et de l'économie. La Commission considère que les Etats membres disposent d'instruments, tels que les garanties temporaires de passif, permettant d'encadrer de tels processus de liquidation ordonnée et permettant le cas échéant d'éviter le développement d'une crise systémique³¹ ».

Complémentarité des règles de concurrence et de régulation prudentielle

En 1995, en présentant les raisons de la première recapitalisation du Crédit Lyonnais de fin 1994, les autorités françaises avaient souligné l'obligation de respecter la contrainte réglementaire de fonds propres pour justifier l'opération au regard des objectifs poursuivis par les politiques communautaires : elles concluaient que les règles communautaires en matière d'aides d'Etat ne pouvaient aboutir à un résultat contraire à une obligation résultant de la régulation prudentielle du secteur imposée par le droit bancaire communautaire. En septembre 1996, lors de la notification des

aides d'urgence, les autorités ont de nouveau justifié l'opération au regard de la réglementation prudentielle : sans ces aides d'urgence, le CL n'aurait plus été en mesure de respecter les obligations prudentielles bancaires. Rappelons que la directive du Conseil relative à un ratio de solvabilité des établissements de crédit³² a introduit en droit communautaire les règles prudentielles définies dans le cadre du travail initié par la Banque des Règlements Internationaux et ayant abouti à la définition d'un ratio prudentiel, défini comme le ratio des fonds propres sur les actifs pondérés par leur niveau de risque. Ce ratio doit être de 8% au minimum. Les fonds propres « durs » (dits *tier one*) doivent eux être d'un minimum de 4% des actifs pondérés.

Cet argument, qui aboutissait à introduire une contrainte exogène à la politique de la concurrence en vue soit de disqualifier le caractère d'aide d'une opération d'injection de fonds propres dans une banque sous-capitalisée, soit de la déclarer *ex-ante* compatible avec le Traité avant tout examen des conditions prévues dans l'encadrement sur les aides au sauvetage et à la restructuration, a été écarté par la Commission. Dans la décision de 1998, elle rappelle qu'une injection de fonds publics dans une banque est une aide si, dans des

circonstances similaires, un investisseur privé n'aurait pas jugé qu'un tel investissement lui apportait une perspective de rémunération normale. Rien dans le droit de la concurrence ni dans le droit bancaire n'interdit de mettre une banque en liquidation, si de telles perspectives de rentabilité n'existent pas, même compte tenu des projets de restructuration de l'établissement concerné. La Commission a noté dans sa décision du 20 mai 1998 que tel était également l'avis de l'autorité de surveillance bancaire française, la Commission Bancaire, qui dans son rapport de 1995 avait considéré qu'une restructuration ordonnée du système bancaire français implique que les établissements de crédit, qui sont des entreprises comme les autres, et qui de ce fait ne doivent pas être à l'abri des sanctions du marché, puissent disparaître³³.

Compte tenu de ces éléments, la contrainte de fonds propres introduite par la réglementation prudentielle bancaire européenne doit être envisagée uniquement dans l'hypothèse de la continuité d'exploitation de l'entreprise bancaire bénéficiaire³⁴, si sa licence bancaire est maintenue, et sachant qu'une autre alternative, celle du retrait de la licence et de la liquidation,

prévoit que les Etats membres mettent en place de tels instruments, J.O. L135 du 31.5.1994, p. 5.

³¹ JO L221 du 8.8.1998, p 67.

³² Directive 89/647/CEE du Conseil du 18 décembre 1989, JO L 336 du 3.12.1989, p14.

³³ Commission bancaire, rapport 1995, p.13.

³⁴ Décision sur les aides au Crédit Lyonnais du 20 mai 1998, JO 221 du 8.8.98 p 62.



demeure toujours possible. La Commission en a déduit que les autorités nationales ne sauraient opposer au respect de l'article 87 du traité une contrainte issue du droit prudentiel.

Il est intéressant de noter que le débat sur les obligations de recapitalisation d'une banque en difficulté oppose aussi parfois les autorités nationales et les banques privées : l'article 52 de la loi bancaire française du 24 janvier 1994 autorise le gouverneur de la Banque de France à *inviter les actionnaires et sociétaires d'un établissements de crédit à lui fournir le soutien qui lui est nécessaire si la situation le justifie*. Dans au moins un cas récent les actionnaires privés d'une banque privée, la Compagnie du BTP, ont refusé de suivre l'invitation du gouverneur de la Banque de France à faire un nouvel apport en capital. La Cour d'Appel de Paris a rendu un arrêt³⁵ sur cette affaire, selon lequel l'article 52 de la Loi bancaire ne saurait être interprété dans un sens coercitif. Ceci est conforme à l'interprétation de la Commission selon lequel l'appel à la solidarité des actionnaires – privés comme publics – ne saurait exclure que ces derniers examinent le nouvel investissement sur la base de sa rentabilité, compte tenu du niveau de risque qu'ils prennent, conformément à ce que fait tout investisseur en économie de marché. En aucun cas le soutien

à une banque en crise ne doit être acquis par avance et considéré comme automatique. Si tel devait être le cas, de graves lacunes dans l'efficience du système bancaire risqueraient d'apparaître.

La Commission a finalement considéré dans sa décision sur le Crédit Lyonnais de 1998 que la politique communautaire de concurrence et la réglementation prudentielle en matière bancaire visaient un objectif commun, celui du développement d'un secteur bancaire concurrentiel et sain³⁶. Ceci implique qu'en contrepartie des possibilités d'entrée dans le secteur, des voies de sortie soient aussi prévues. Sinon, les établissements non concurrentiels n'étant pas sanctionnés par la sortie du marché, une situation malsaine de surcapacité risque de voir le jour. *In fine*, ce sont toujours les consommateurs et les contribuables qui payent le prix de telles distorsions de marché.

Evaluation des outils existants de la politique d'aide

Les aides au fonctionnement sont interdites et rien ne permet d'envisager leur compatibilité avec le traité³⁷. L'encadrement

sur les aides au sauvetage et à la restructuration³⁸ adopté par la Commission en 1994 prévoit un certain nombre de critères la guidant dans son examen en vue de déclarer la compatibilité – ou l'incompatibilité – de l'aide. Il n'est pas exagéré de dire que cet encadrement a connu un test crucial avec les crises à répétition du Crédit Lyonnais de 1994 à 1998, ayant abouti au plus important cas d'aides d'Etat de l'histoire de la Communauté. *A posteriori*, sans son adoption en 1994 il apparaît que la Commission aurait été très démunie pour traiter avec rigueur et objectivité une telle crise.

Ainsi que rappelé ci-dessus, l'encadrement prévoit que pour qu'une aide à la restructuration soit déclarée compatible, il convient que l'entreprise bénéficiaire soit viable, que l'aide soit limitée au strict nécessaire et que des contreparties permettent de limiter l'effet distorsif de l'aide sur la concurrence. La question de la viabilité est essentielle : si celle-ci n'est pas assurée, l'aide n'apporte qu'un traitement palliatif mais n'a aucun effet curatif. On est alors quasi certain de voir un nouveau plan d'aides nécessaire au terme de quelques années. Ceci est contraire au

³⁵ Arrêt du 13 janvier 1998.

³⁶ Décision sur les aides au Crédit Lyonnais du 20 mai 1998, JO 221 du 8.8.98 p 62.

³⁷ Cfr. décision de la Commission sur la Westdeutsche Landesbank (WestLB), JO L150 du 23.6.2000, p. 1.

³⁸ Lignes directrices communautaires pour les aides d'Etat au sauvetage et à la restructuration des entreprises en difficulté, JO C368 du 23.12.1994. Ces lignes directrices ont été mises à jour en 1999, Cf. JO C288 du 9.10.1999.

principe *'one time, last time'*³⁹ qui veut qu'en principe une aide ne soit accordée qu'une seule fois. Autrement, l'aide à la restructuration se voit détournée de son objectif et devient une aide au fonctionnement.

Au regard de l'expérience récente, c'est sans doute l'articulation entre les deux premiers critères qui requiert l'évaluation la plus complexe de la part de la Commission. En juillet 1995, à la suite de nombreuses hésitations, la Commission avait sur la base du plan de restructuration présenté par les autorités françaises, et des informations dont elle disposait, conclu que l'aide au Crédit Lyonnais était proportionnée aux besoins de l'entreprise et que la banque était viable. Pourtant, il a bien fallu constater en septembre 1996 lors de la notification des aides d'urgence que tel n'était pas le cas : la construction du plan de restructuration de 1995 s'est *ex post* avérée fragile, la banque n'a pas été en mesure de se redresser, et sans les aides d'urgence accordées par l'Etat pour 1995 (rétroactivement) et 1996 elle aurait enregistré des pertes la mettant en contravention avec la réglementation prudentielle bancaire. A terme, elle risquait de perdre son agrément bancaire et de sortir du marché.

Il est difficile *a posteriori* de juger s'il s'agit d'une erreur

initiale de diagnostic de la part de la Commission en 1995 (influencée en cela par les autorités françaises) ou bien d'une mise en oeuvre insatisfaisante du plan de restructuration : ainsi que l'a par la suite reconnu le président du Crédit Lyonnais, il apparaît toutefois que dans les premières années de la crise la nouvelle direction de la banque a fait une erreur de diagnostic en attribuant aux participations non bancaires et internationales du Crédit Lyonnais l'essentiel de son attention et qu'elle a gravement sous-estimé l'ampleur des restructurations nécessaires pour améliorer la rentabilité du réseau bancaire du Crédit Lyonnais en France, très inefficace et peu performant. Ce n'est qu'une fois qu'a été prise en compte cette dimension de la crise qu'une perspective réelle de la juguler est apparue.

De tels échecs d'un plan de restructuration approuvé par la Commission, surtout dans un cas aussi important, sont coûteux non seulement pour le budget de l'Etat Membre, principal maître d'oeuvre de ce plan, mais aussi pour la crédibilité de la politique communautaire de concurrence. La leçon qu'en a retenu la Commission est que dans de telles situations particulièrement complexes, concernant des entreprises multinationales ayant de nombreux centres d'activité de nature différente et des centaines de filiales, une contre-expertise est indispensable : pour cela, la Commission s'est appuyée en 1997-98, lors de

l'examen du nouveau plan de restructuration du Crédit Lyonnais, sur une banque conseil qui lui a soumis une évaluation indépendante du plan de restructuration présenté par les autorités, concluant à la viabilité de celle-ci. Ce diagnostic semble confirmé par l'évolution favorable de la situation de l'entreprise depuis lors. La pratique de la Direction Générale de la Concurrence est à présent de commanditer systématiquement de telles contre-expertises lors de cas d'un niveau de complexité élevée. Quelle que soit la difficulté de l'évaluation de la viabilité du plan soumis par les autorités, ceci ne remet pas en cause la pertinence de ce critère qui s'avère être la pierre de touche pour l'évaluation tout cas de ce type.

L'articulation prévue dans les lignes directrices entre les aides au sauvetage et les aides à la restructuration a également été fondamentale dans le traitement de la crise du Crédit Lyonnais à partir de 1996. L'encadrement prévoit en effet que les aides de sauvetage, provisoires (en principe d'une durée de 6 mois maximum) soient suivies soit d'un plan de restructuration – pour lequel toute mesure d'aide supplémentaire doit être notifiée à la Commission – soit, si la restructuration apparaît impossible, la liquidation de l'entreprise. Dans le cas du Crédit Lyonnais, la décision de septembre 1996 s'est strictement limitée à l'approbation des aides de sauvetage et a stipulé que

³⁹ Renforcé dans la nouvelle version de l'encadrement de 1999.

toute mesure nouvelle d'aide à la restructuration devrait lui être notifiée en même temps qu'un nouveau plan de restructuration.

L'exigence de contreparties imposées à l'entreprise aidée a également été confirmée comme un critère essentiel, seul en mesure vis-à-vis des concurrents de l'entreprise bénéficiaire d'assurer la crédibilité d'une décision positive sur un montant important d'aides, qui est, il convient toujours de le rappeler, une exception faite à l'interdiction de principe prévue par le traité. Nonobstant la viabilité de la banque, la Commission a dans un premier temps, fin 1997, jugé très insuffisant le niveau de contreparties présenté par les autorités en vue d'atténuer les effets distorsifs des aides. Ce n'est que lorsque la Commission a, en mai 1998, obtenu des engagements sur un montant très supérieur de contreparties (un total de 645 milliards de francs de cessions ou fermetures d'actifs en tenant compte des opérations de restructuration de 1995 et 1998) qu'elle a *in fine* déclaré les aides compatibles avec le traité. Tous ces critères d'appréciation étaient ceux prévus par les lignes directrices sur les aides au sauvetage à la restructuration.

Dans l'ensemble, ces lignes directrices, conçues par la Commission à partir de son expérience en matière de grandes opérations de restructuration industrielle, se sont donc avérées adaptées au traitement d'une

grave crise bancaire. Elles ont résisté à cette épreuve et fourni le cadre indispensable à l'examen de la Commission, sur la base de critères objectifs, publiés et ainsi connus à l'avance par l'ensemble des parties intéressées⁴⁰.

1.0.0.2. Une évaluation possible des distorsions de concurrence

Par rapport aux décisions antérieures en matière bancaire, une nouveauté a été introduite dans la décision sur le Crédit Lyonnais de mai 1998, et reprise dans les décisions postérieures de la Commission en matière d'aides d'Etat apportées à des banques sous forme de fonds propres ou de quasi-fonds propres (Crédit Foncier, Société Marseillaise de Crédit, Banco di Napoli, Banco di Sicilia) : pour la première fois la Commission a procédé à une évaluation – indicative – de la distorsion de concurrence introduite par les aides.

En temps normal une telle évaluation est très difficile. Si un Etat Membre accorde une aide à une entreprise, la connaissance que l'on a de la distorsion de concurrence est plutôt intuitive – cet argent donne un avantage à l'entreprise qui lui permet de concurrencer les autres présentes

sur les mêmes marchés. Pour cette raison, la plupart des décisions en matière d'aide ne prévoient normalement pas la quantification de la distorsion provoquée par l'aide. Certes, il est possible d'examiner différents ratios : dans un secteur donné il existe une relation moyenne entre la capitalisation en fonds propres et le chiffre d'affaires, de sorte qu'une injection en fonds propres de X millions d'euros permettra la réalisation d'un chiffre d'affaires de Y millions d'euros. Mais de tels ratios de capitalisation, si ils peuvent être pertinents dans des entreprises hautement capitalistiques (par exemple la sidérurgie) sont en revanche beaucoup moins significatifs dans des secteurs de services à faible intensité capitaliste et donnent des indications très approximatives.

Dans le secteur bancaire toutefois, la relation entre fonds propres et actif pondéré est régie par la contrainte prudentielle de solvabilité rappelée ci-dessus, de sorte que l'on sait parfaitement qu'une aide de 1 million d'euros en fonds propres permet à une banque d'avoir un montant d'actifs pondérés à son bilan de 12,5 à 25 millions d'euros (selon que l'on applique la contrainte du ratio « tier one » de 4% ou celle du ratio « tier one + tier two » de 8%). Le ratio de solvabilité peut se « travailler » par le numérateur mais aussi par le dénominateur : une banque connaissant une sous-capitalisation au regard des

⁴⁰ De légères adaptations ont été apportées dans l'encadrement révisé de 1999 permettant de mieux prendre en compte la spécificité des situations d'aide au sauvetage de banques en difficulté.

règles prudentielles peut chercher à augmenter ses fonds propres (numérateur) ou diminuer ses actifs pondérés (dénominateur). Elle ne peut en tout cas pas augmenter ces derniers tant que ses fonds propres sont insuffisants. La contrainte de solvabilité exerce donc un effet de bridage de la croissance que souligne la Commission⁴¹ : les établissements les moins performants ne peuvent pas développer de stratégie de croissance expansive. Sans aides, une entreprise bancaire non rentable et sous-capitalisée doit réduire son bilan et son activité, la contrainte de solvabilité a un effet « auto punitif ». Dans le cas d'injections en capital ou de mesures d'effet équivalent pouvant être déclarées compatibles avec le traité, le rôle des contreparties sous forme de cessions d'actifs est, dans un tel contexte, de limiter la distorsion de concurrence provoquée par les aides, ainsi estimée de façon très indicative. Il s'agit là d'une autre facette de la complémentarité déjà soulignée entre la politique de concurrence et les effets de la régulation prudentielle.

Cette évaluation indicative, en termes d'actifs pondérés au bilan d'une entreprise, justifie *ex post* la nature des contreparties déjà retenue en 1995, puis reprise en 1998 dans le cas du Crédit Lyonnais : l'effort demandé à la banque avait été évalué en

termes de diminution de bilan (par cession d'actifs). Ainsi, en contrepartie des aides reçues, la banque devait faire elle-même une partie du chemin par un effort de réduction de bilan qu'en vertu de la relation précédemment soulignée une banque non rentable doit faire si ses fonds propres sont insuffisants. Si l'on prend en compte les deux décisions de 1995 et 1998, c'est à plus du tiers de ses actifs que le CL aura finalement dû renoncer en contrepartie des aides colossales reçues.

Pour déterminer les niveaux de contreparties nécessaires, la Commission n'a toutefois pas été jusqu'à appliquer de façon mécanique cette relation entre aides et distorsions, sur la base des distorsions potentielles telles qu'évaluées ci-dessus. Dans le cas du Crédit Lyonnais c'était impossible dans le cadre d'une décision de compatibilité, les distorsions théoriques maximales calculées par cette relation étant *in fine* supérieures au bilan de l'entreprise. A l'inverse de son approche de la notion d'aide qu'elle considère comme objective, la Cour de Justice laisse à la Commission une marge discrétionnaire d'appréciation quant aux conditions permettant de déclarer la compatibilité des aides avec l'intérêt communautaire, pourvu que celle-ci motive clairement sa décision et ne fasse pas d'erreur manifeste d'appréciation. Dans les dernières décisions en matière d'aides à la

restructuration de banques, la Commission n'a pas cherché à obtenir des contreparties strictement égales aux niveaux estimés de distorsions de concurrence. Il conviendra d'examiner à l'avenir, si de nouveau cas comparables venaient à se présenter, si la Commission maintient l'approche empirique suivie dans les précédents cas, ou bien relève le niveau d'exigences en matière de contreparties exigibles pour que les aides puissent alors être déclarées compatibles (pourvu que les autres critères de compatibilité soient respectés).

1.0.0.3. Conclusion

Depuis la première décision de la Commission de 1995, on a assisté à une certaine banalisation de la manière dont les cas d'aides d'Etat aux banques sont traités: ainsi que souligné à plusieurs reprises dans les décisions les plus récentes, les banques sont des entreprises qui relèvent des règles générales en matière d'aides, et en particulier de l'encadrement sur les aides au sauvetage et à la restructuration. Ceci d'autant plus, ainsi que souligné ci-dessus, que l'encadrement sur ces aides, conçu bien avant ces crises bancaires s'est avéré un outil efficace et permettant pour l'essentiel de traiter ces crises. Seuls quelques ajustements pourraient être envisagés, concernant principalement les procédures applicables aux règles de sauvetage, en vue d'adapter les procédures

⁴¹ Décision Crédit Lyonnais du 20 mai 1998, JO L221 du 8.8.98, p 72.



OPINION AND COMMENTS

existantes à des situations d'urgence. En revanche, il n'est pas question de déroger au droit général et de créer un encadrement spécifique applicable au secteur bancaire. Non seulement la nécessité d'un tel encadrement n'est pas apparue, mais il pourrait même être nuisible au maintien de la discipline d'aides dans ce secteur.

Les dirigeants des entreprises aidées ont appris au moins une

leçon : les aides s'obtiennent au prix d'une difficile cure d'austérité, de plans de restructuration accompagnés de changement du management, et d'une réduction de la taille de l'entreprise. Le Crédit Lyonnais est ainsi passé en cinq ans de la première à la quinzième ou vingtième place des entreprises bancaires en Europe (suivant le critère de taille retenu). Les conséquences du laxisme des politiques bancaires expansionnistes et imprudentes sont

sanctionnées. La récente expérience communautaire en matière d'aides d'Etat dans les cas de crises bancaires montre ainsi que l'approbation de l'aide ne signifie pas pour autant qu'il peut être dérogé aux règles de concurrence. Ainsi a été mise une limite au phénomène de « moral hazard » qui veut les entreprises inefficaces soient aidées et non pas soumises aux règles normales du marché.



Sabre contre Amadeus e.a. : un dossier riche en enseignements

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INTRODUCTION

Le 25 juillet 2000, la Commission a annoncé qu'elle avait décidé de clore une enquête sur Air France, concernant une discrimination présumée à l'encontre de Sabre - un système informatisé de réservation (SIR) américain. Ce classement faisait suite à la signature, par la compagnie aérienne française et Sabre, d'une charte de bonne conduite garantissant à Sabre, ainsi qu'aux autres SIR, des conditions équivalentes à celles consenties au système Amadeus, dont Air France est copropriétaire.⁴²

L'affaire Sabre contre Amadeus e.a. présente un double intérêt. D'une part, elle crée un précédent: il s'agit du premier cas concret de mise en œuvre du mécanisme de courtoisie active avec l'autorité de concurrence des Etats Unis d'Amérique. D'autre part elle clarifie la portée des règles de concurrence à l'égard d'un secteur en pleine évolution tel que les SIR.

⁴² Communiqué de presse IP/00/835 du 25.07.2000, consultable sur le serveur RAPID <http://europa.eu.int/rapid/start/welcome.htm>

LA DEMANDE DE COURTOISIE ACTIVE

L'origine de l'enquête remonte à une plainte que la Compagnie aérienne American Airlines avait déposé en juin 1996 auprès du *Department of Justice of the United States of America* (DoJ). American Airlines se plaignait essentiellement du fait que quatre compagnies aériennes européennes (Air France, Iberia, Lufthansa et SAS), toutes liées au SIR Amadeus, favorisaient ce dernier au détriment de Sabre, son propre SIR. American Airlines leur reprochait notamment de ne pas fournir à Sabre une information sur les vols aussi complète et ponctuelle que celle fournie à Amadeus, et de ne pas lui faire profiter des mêmes possibilités techniques (par exemple de la confirmation en ligne des réservations).

En janvier 1997, le DoJ a formellement demandé à la Commission d'enquêter sur les allégations de SABRE au titre des règles de concurrence de l'Union Européenne. Il s'agissait de la première application du mécanisme de la "courtoisie active" prévu par l'accord de coopération UE - Etats Unis en

matière de concurrence⁴³. La courtoisie active permet en effet aux autorités de la concurrence américaines de demander à la Commission d'enquêter sur des actes anticoncurrentiels présumés commis en Europe, et inversement (*voir encadré*).

L'enquête préliminaire n'a révélé aucune preuve de discrimination de la part d'Iberia, de Lufthansa et de SAS. La Commission a donc cessé d'enquêter sur ces trois compagnies. En revanche, sur la base des résultats de ses premières investigations, la Commission a décidé d'ouvrir la procédure formelle à l'encontre d'Air France et lui a adressé une communication des griefs. Comme indiqué en introduction, les parties ont ensuite signé une charte de bonne conduite et la Commission a décidé de clore l'affaire (cf. infra).

Du point de vue juridique, la demande du DoJ a conduit la Commission à entamer une instruction d'office, dans le cadre des pouvoirs qui lui sont conférés par le règlement de procédure n°17/62⁴⁴. Ainsi, du point de vue des parties mises en cause, le fait que l'affaire ait trouvé son origine dans cet instrument nouveau ne s'est pas traduit par une altération des droits découlant dudit règlement.

⁴³ Décision du Conseil et de la Commission du 10 avril 1995 (95/145/CE, CECA) JO L 95 du 27 avril 1995, p.47 et JO L 131 du 15 juin 1995, p.38

⁴⁴ JO L 13 du 21.2.1962, p. 18



Le seul élément qui a distingué le déroulement de cette affaire par rapport aux cas traités "habituellement" concerne le processus d'information, par la Commission, des autorités de concurrence américaines. Conformément aux dispositions de l'accord bilatéral précité, la Commission a informé le DoJ tout au long de la procédure du déroulement de celle-ci. L'information a porté plus particulièrement sur:

- les mesures d'application prises (par exemple, la communication des griefs à Air France);
- les principaux développements survenus durant l'instruction (par exemple, l'arrêt de l'instruction des allégations contre les autres parties mises en cause) et
- sa décision finale (le classement de l'affaire).

Ainsi, le 24 juillet 2000 la Commission a adopté une décision autorisant le Directeur Général de la Concurrence de répondre formellement à la demande du DoJ, conformément à l'accord bilatéral précité⁴⁵.

LES LEÇONS DE L'AFFAIRE QUANT AU FOND

Classer une affaire sans suite risque de faire passer sous silence l'analyse sous-jacente qui y a conduit. Or, dans le cas présent, l'instruction de la plainte d'American Airlines a conduit la Commission à mener une ré-

flexion approfondie sur le fonctionnement du marché des SIR et sur les droits et obligations des différents acteurs sur ce marché. Preuve en est la durée de l'enquête, à savoir plus de trois ans.

Pour avoir quelques détails au sujet de cette réflexion, il est néanmoins possible de se référer à la communication des griefs que la Commission a adressée à Air France en février 1999⁴⁶: l'approche de la Commission y est décrite explicitement en ce qui concerne les griefs retenus, et résulte implicitement en ce qui concerne les griefs ne l'ayant pas été.

Le présent article explique ci-après les principaux éléments du raisonnement sous-jacent à la communication des griefs de la Commission. Il convient toutefois de rappeler qu'une communication des griefs constitue une appréciation préliminaire et non une évaluation définitive de la part de la Commission. Ainsi, les principes suivants ne peuvent en aucun cas lier la Commission ou ses services.

Obligation, pour une compagnie aérienne dominante, de neutralité vis à vis des SIR

A ce jour, la Commission a adopté une seule décision dans le secteur des SIR au titre des règles de concurrence: la déci-

sion *London European vs Sabena*⁴⁷. Il y était question de droit, pour un transporteur, d'être affiché dans un SIR dominant. Dans le cas présent, la situation est inversée puisque l'affaire concerne les obligations auxquelles est soumis un transporteur dominant vis à vis des SIR.

Dans sa communication des griefs, la Commission a estimé qu'il convenait de distinguer deux marchés:

- le marché de l'offre, par les compagnies aériennes, de services aériens réguliers aux agents de voyage, en vue de leur distribution au "public",
- le marché de l'offre, aux agents de voyage, de services SIR (destinés à sonder le marché et à effectuer des réservations).

Pour exercer ses activités de manière efficace, une agence de voyage s'équipera du SIR qui lui permettra d'offrir à ses clients le meilleur service de transports (par exemple les prix les plus intéressants, la meilleure disponibilité de places, etc...) et ce, pour le plus grand nombre de compagnies aériennes possibles (ou, en tout état de cause, pour les compagnies qui représentent la plus grande partie de son chiffre d'affaires).

Dans ce contexte, un transporteur en position dominante (sur le premier marché) qui communique de meilleures

⁴⁵ Décision C(2000) 2160, non publiée

⁴⁶ Communiqué de presse IP/99/171 du 15.03.199, consultable sur le serveur RAPID

⁴⁷ Décision du 4.11.1988, affaire IV/32.318, JO L 317 du 24.11.1988 p. 47



informations à son propre SIR qu'à d'autres affecte la concurrence sur le deuxième marché (par "meilleures informations" il faut entendre des tarifs plus exacts, plus exhaustifs, plus fiables,...). Il en va de même si ce transporteur habilite uniquement son propre SIR à des fonctions avancées comme la vérification de la disponibilité en ligne, la pré-réservation de sièges, etc...

Sous réserve de l'appréciation de l'affectation du commerce entre Etats membres et en l'absence de toute autre justification, une telle pratique est contraire à l'article 82 CE dans la mesure où ce transporteur dominant opère une discrimination entre SIR et utilise sa position dominante sur un marché pour protéger ou renforcer la position de marché de son propre SIR sur un autre marché.

Applicabilité des règles de concurrence au secteur des SIR

Lors de l'instruction préliminaire, plusieurs compagnies aériennes ont invoqué la non applicabilité du Règlement de procédure n°17/62 au secteur des SIR pour deux raisons. D'une part parce que ce règlement ne s'applique pas aux positions dominantes sur le marché des transports⁴⁸. D'autre part parce que, selon elles, le marché des SIR échapperait aux règles de concurrence (articles 81 CE et

82 CE) en raison de l'existence du code de conduite sur les SIR⁴⁹.

La première objection n'est pas pertinente parce que le premier marché en cause n'est pas un marché de transport mais un marché de *distribution* d'un service de transports aériens (couvert par le champ d'application du règlement n°17/62).

La seconde objection n'est pas pertinente non plus, parce qu'une norme de législation secondaire (comme un Règlement du Conseil) ne peut en aucun cas affecter l'applicabilité des règles du Traité. Il convient d'ailleurs de remarquer que le code de conduite même stipule qu'il s'entend sans préjudice de l'application des articles 81 et 82 du traité (quatrième considérant).

⁴⁹ Règlement (CE) n° 323/1999 du Conseil du 8 février 1999 modifiant le règlement (CEE) n° 2299/89 instituant un code de conduite pour l'utilisation de systèmes informatisés de réservation (SIR).

Le marché européen de la réservation informatisée est en effet régi par un code de conduite qui a pour objet d'assurer une concurrence loyale entre les transporteurs aériens et entre les systèmes informatisés de réservation. Il dispose, entre autres, que les transporteurs participants veillent à ce que les données qu'ils décident d'introduire dans un SIR soient exactes et ne soient pas moins complètes que celles destinées à tout autre SIR (où les "données" concernent les horaires, les tarifs, les places disponibles etc...).

La procédure contre Air France

Dans le cas d'espèce, la Commission a estimé, dans sa communication des griefs, qu'Air France était une compagnie aérienne dominante sur le marché de la fourniture aux agences de voyages françaises de services aériens en vue de leur distribution au public. Elle lui a contesté les trois griefs à suivants:

- Le fait d'avoir, entre octobre 1993 et juin 1997, distribué ses tarifs non européens selon une procédure telle qu'Amadeus recevait ces tarifs bien avant Sabre (avec une avance pouvant aller jusqu'à trois jours).
- Le fait d'avoir, entre 1992 et mai 1996, distribué ses tarifs intra européens non domestiques selon une procédure telle que Sabre ne les recevait pas en totalité et les recevait avec un retard par rapport à Amadeus pouvant aller jusqu'à une semaine.
- Le fait de ne pas avoir communiqué son tarif Fly and Drive à Sabre en 1997.

Chacun de ces trois éléments conduisait au même résultat, à savoir qu'Amadeus était plus complet que Sabre. Ainsi, chacun d'entre eux contribuait à renforcer ou forger la perception des agents de voyages français qu'Amadeus répondait mieux à leurs besoins que Sabre. Or, lors de l'instruction préliminaire, la Commission n'a décelé aucune justification objective au comportement d'Air France, ce

⁴⁸ Règlement n°141/62, JO 124 du 28.11.1962, p. 2751

qui l'a conduite à entamer la procédure formelle contre la compagnie aérienne française.

En réalité, il existait bien un certain nombre de contraintes techniques et économiques expliquant les deux premiers éléments: du point de vue d'Air France, la procédure choisie pour transmettre ses tarifs était la plus efficace. Toutefois, la Commission a également constaté qu'Air France n'avait adopté aucune mesure pour surmonter ces contraintes, alors que de telles mesures existaient et qu'elles n'étaient pas disproportionnées. Ainsi, la Commission a estimé que l'obligation de neutralité d'un transporteur dominant, tout en l'autorisant de poursuivre l'efficacité économique, lui impose de rechercher et de mettre en œuvre toute mesure raisonnable nécessaire à assurer cette neutralité.

Le classement de la procédure

Avant même la conclusion de la procédure formelle, cependant, Sabre et Air France ont signé une "charte de bonne conduite". Cette charte fait obligation aux parties de réserver un traitement équitable aux différents SIR et aux différentes compagnies aériennes. Elle prévoit notamment l'engagement d'Air France de transmettre ses tarifs par le biais de vendeurs de tarifs indépendants uniquement, de participer dans tous les SIR au même niveau de connexion, d'habiliter tous les SIR aux mêmes fonctionnalités et de promouvoir Sabre aussi favora-

blement que n'importe quel autre SIR. Elle prévoit également des engagements réciproques en matière d'échange régulier d'informations de même qu'une coopération accrue en matière d'innovations techniques et de mise au point de nouveaux produits. De plus, Air France s'est engagée à étendre à tout SIR qui en fasse la demande les bénéfices de cette charte.

Prenant acte du contenu de la charte de bonne conduite et suite à une invitation en ce sens du plaignant, la Commission a décidé de ne pas poursuivre la procédure jusqu'au stade de la décision formelle et de classer l'affaire sans suite.

S'agissant d'une issue peu habituelle pour une procédure ayant atteint le stade de la communication des griefs, il convient de signaler que ce classement a été motivé par les spécificités du cas. En premier lieu, le fait que les infractions contestées à Air France sont toutes terminées depuis longtemps. Ensuite, le fait que leur impact sur la position concurrentielle de Sabre sur le marché pertinent a été vraisemblablement faible. Enfin, le fait que la charte de bonne conduite signée par les parties – y compris son application à tous les SIR – conjure tout risque de répétition de l'infraction pour l'avenir. Dans ce contexte, la valeur ajoutée d'une décision formelle aurait été vraisemblablement faible par rapport aux ressources nécessaires pour y arriver.

Le rejet des autres allégations

Outre les trois griefs retenus contre Air France, la plainte d'American Airlines comportait un grand nombre d'autres allégations que la Commission a estimé ne pas devoir retenir dans le cadre de la communication des griefs. Certaines d'entre elles, parce que les faits n'avaient pas été correctement rapportés par le plaignant; celles-ci ne méritent pas d'être relatées ici. D'autres, en revanche, n'ont pas été retenues pour des raisons de droit. Ces raisons méritent quelques explications parce qu'elles permettent de mieux appréhender les limites des obligations qui découlent des règles de concurrence dans un cas d'espèce.

Le droit pour une entreprise de protéger ses intérêts commerciaux légitimes

American Airlines reprochait aux compagnies aériennes visées par la plainte d'avoir habilité Amadeus (et pas Sabre) à effectuer un certain nombre de fonctions de réservation spéciales. Lors de l'instruction, ces compagnies ont confirmé leur refus d'habiliter Sabre aux fonctions en cause, mais ont justifié leur refus par le fait que les fonctions offertes par Sabre ne présentaient pas le même degré de protection des données qu'Amadeus. Selon elles, habiliter Sabre à ces fonctions aurait affecté leurs intérêts commerciaux.

En principe, une disparité de traitement entre SIR constitue une violation de l'article 82 CE. Toutefois, l'enquête préliminaire de la Commission a confirmé que, à l'époque des faits, les différences techniques entre Sabre et Amadeus se traduisaient effectivement par des différences en matière de possibilités de gestion et/ou de protection de données sensibles.

Dès lors, la Commission a estimé que le refus des compagnies aériennes d'habilitier Sabre à utiliser certaines fonctionnalités pouvait être justifié objectivement tant que Sabre n'aurait pas développé son système informatique à un niveau qui offre les mêmes garanties qu'Amadeus. En effet, les règles de concurrence de l'Union Européenne ne peuvent en aucun cas obliger une entreprise à agir contre ses propres intérêts commerciaux légitimes.

Dans le cas présent, la Commission a considéré comme "légitimes" les intérêts suivants:

- la protection contre les fraudes:

American Airlines se plaignait du fait que ces compagnies aériennes autorisaient uniquement Amadeus à accéder à leur base données interne (par exemple pour modifier des réservations). Les compagnies ont répondu que, au moment des faits, certains agents équipés avec Sabre avaient utilisé cette fonction pour se faire verser des commissions qui ne corres-

pondaient pas à la vente de billets. Or un tel risque n'existait pas avec Amadeus parce que celui-ci était équipé de dispositifs de protection contre les utilisations frauduleuses;

- la protection des secrets d'affaires:

American Airlines se plaignait du fait que ces compagnies aériennes habilitaient Amadeus et pas Sabre à gérer les tarifs négociés (c'est à dire réservés à des groupes restreints d'utilisateurs) ou les "Frequent Flyer Passengers". Les compagnies ont répondu que, contrairement à Amadeus, Sabre n'était pas en mesure, au moment des faits, de gérer ces tarifs ou ces données de manière telle que ces informations confidentielles ne soient pas divulguées;

- la protection de la stratégie de l'entreprise:

American Airlines se plaignait du fait que ces compagnies aériennes habilitaient Amadeus à effectuer un plus grand nombre de réservations simultanées que Sabre. De plus ces compagnies avaient habilité uniquement Amadeus à la confirmation en ligne des réservations. Les compagnies ont répondu que, au moment des faits, Sabre n'était pas en mesure d'assurer le fonctionnement correct de leurs Revenue Management Systems (systèmes internes aux compagnies aériennes visant à maximiser la recette pour un vol donné) et n'offrait pas les mêmes garanties qu'Ama-

deus en matière de prévention de surréservation.

La liberté pour une entreprise de choisir ses propres standards industriels

American Airlines reprochait aux compagnies aériennes visées par la plainte d'avoir développé certaines fonctions ou bases de données selon un standard compatible avec Amadeus mais incompatible avec Sabre. Par exemple, Sabre ne pouvait pas lire certaines données tarifaires ou certaines pages d'informations en raison du nombre de caractères par ligne ou de lignes par page.

La Commission a rejeté cette allégation, considérant que l'élaboration des standards industriels est un facteur de concurrence essentiel. Ainsi, aucune entreprise ne saurait être tenue à adopter un standard particulier (à moins que cette obligation ne soit établie par l'autorité publique, dans un souci d'intérêt général).

En revanche, il importe qu'une entreprise dominante accepte de communiquer (et communique effectivement) avec suffisamment de préavis les standards qu'elle adopte de manière à ce que les tiers puissent s'y adapter. Ce principe a déjà été établi lors du règlement de l'affaire IBM⁵⁰.

⁵⁰ Cf. XIV^e Rapport sur la politique de concurrence, points 94 et suivants.

Ainsi, la Commission a exigé que la charte de bonne conduite signée par Sabre et Air France prévoie explicitement, d'une part, la liberté pour les parties dans leur choix et le développement des standards et, d'autre part, l'obligation de communiquer ces standards.

Le coût des adaptations techniques

Un des corollaires du point précédent est de savoir qui, entre la compagnie aérienne et le SIR, doit assumer le coût des développements nécessaires à adapter les SIR aux systèmes des compagnies aériennes. En effet, certaines compagnies aériennes ont été mises en cause par American Airlines parce que celles-ci refusaient de payer les développements nécessaires à assurer la compatibilité de leur système avec Sabre. A ce propos les compagnies mises en cause ont invoqué que ces développements coûtaient trop cher par rapport au bénéfice qu'elles en auraient retiré: les parts de marché de Sabre étant très faibles dans les marchés en question, le coût des adaptations n'aurait vraisemblablement pas été couvert par un juste retour.

La Commission a accepté le point de vue des compagnies aériennes. En effet, elle a estimé que c'est au SIR "demandeur" de s'adapter aux standards (ou à la structure du système informatique) de la compagnie aérienne et non l'inverse (l'obligation du transporteur se limitant à communiquer ses standards). Le coût

des adaptations doit, en toute logique, être supporté par le SIR à moins que la compagnie aérienne n'en décide autrement pour des raisons qui lui sont propres.

Les contraintes propres au développement des nouveaux produits

American Airlines reprochait aux compagnies aériennes visées par la plainte d'avoir favorisé Amadeus dans ses programmes de développement de nouvelles fonctions. En pratique, American Airlines soutenait que ces compagnies aériennes lançaient les nouvelles fonctionnalités systématiquement avec Amadeus et ne les introduisaient dans Sabre que par la suite (donc en retard). Or, selon American Airlines, les compagnies aériennes auraient l'obligation de lancer toute nouvelle fonction en même temps dans tous les SIR.

Tout en reconnaissant qu'un retard systématique dans l'introduction des nouvelles fonctionnalités peut nuire à l'image d'un SIR, la Commission n'a pas retenu l'idée d'American Airlines que l'obligation de neutralité des transporteurs dominants leur impose d'habiliter tous les SIR à toutes les fonctionnalités au même moment. En effet, une telle obligation serait excessive et ignorerait les contraintes intrinsèques à tout processus de développement technique.

Comme rappelé ci-dessus, l'existence de différents standards et de logiques de systèmes

conduit à ce que l'introduction d'une nouvelle fonctionnalité (par exemple la possibilité de réserver un repas spécial pour un certain passager) requiert des développements de deux types. En premier lieu, le développement de la fonctionnalité en question entre la compagnie aérienne et son propre système informatique (qui, souvent, présente un degré de compatibilité élevé avec son SIR associé). Ensuite, le développement des adaptations nécessaires pour permettre cette même fonctionnalité sur les autres SIR.

Or la logique économique veut que ces développements soient menés en série (l'un après l'autre) et non en parallèle (tous en même temps). En conséquence, il est inévitable qu'un certain laps de temps s'écoule entre l'introduction d'une fonctionnalité dans un SIR par rapport à un autre.

Une programmation en série des développements ne peut donc pas être interprétée comme indicative d'un abus de position dominante (sauf, bien entendu, s'il devait s'avérer que ce laps de temps a été excessif ou que le transporteur dominant n'avait pas mis en œuvre les mesures nécessaires afin de limiter ce laps de temps à un délai raisonnable).

CONCLUSION

Le cas Sabre contre Amadeus e.a. nous suggère deux considérations.

En premier lieu, l'impact que ce précédent pourra avoir pour l'avenir. En effet, bien que cette affaire n'ait pas donné lieu à une décision formelle de la part du Collège, elle a conduit les services de la Commission à prendre explicitement ou implicitement position sur des thèmes liés aux technologies de l'information. Nul doute qu'avec le développement du commerce électronique, des thèmes analo-

gues risquent de se poser à nouveau. Il sera alors intéressant de voir si ces prises de position préliminaires seront confirmées par la suite.

En second lieu, le fait que cette affaire, couronnée de succès, constitue le premier cas concret de mise en œuvre du principe de courtoisie active prévue par l'accord bilatéral entre l'Union Européenne et les Etats Unis

d'Amérique. Comme l'a déclaré le Commissaire Monti, l'issue satisfaisante de cette enquête "démontre qu'une collaboration étroite entre l'UE et les États-Unis permet de mieux faire respecter le droit de la concurrence des deux côtés de l'Atlantique", au profit des entreprises et des consommateurs.

Positive Comity

Stephen Ryan, DG COMP A-4

1. What is positive comity?

International comity. The notion of comity, whereby one jurisdiction may take into account the interests of another jurisdiction in the application of its laws, is well-established in international law. In pursuit of this principle, a jurisdiction may elect to exercise restraint or moderation in its law enforcement activity, out of deference to the important interests, and sometimes conflicting laws, of another jurisdiction. At least in the area of competition law enforcement, two distinct forms of comity can be distinguished: traditional and positive comity.

Positive comity. Positive comity is the process by which one

jurisdiction, which believes that its important interests are being adversely affected by allegedly anticompetitive conduct taking place in the territory of another jurisdiction, may request that the latter investigate and, if warranted, prosecute the behaviour on the basis of its laws. This would normally imply that the requesting jurisdiction would then refrain from pursuing its own enforcement activity with respect to the allegedly anticompetitive conduct, at least pending the outcome of the requested investigation.

Traditional (or "negative") comity distinguished. The notion of traditional comity, on the other hand, means that a jurisdiction should normally pay heed to the important interests of other

jurisdictions in the application of its competition laws. In particular, observance of traditional comity is intended to avoid any direct conflict between competition law enforcement activity in different jurisdictions.

2. Positive comity in the 1991 and 1998 EU/US Agreements

Positive comity is provided for in the 1991 EU/US competition cooperation agreement⁵¹, and in the 1998 EU/US positive comity accord⁵²; the notion is also

⁵¹ Agreement between the Government of the United States of America and the Commission of the European Communities regarding the application of their competition laws, OJ L 95 of 27.4.95, pp.47 - 50.

⁵² Agreement between the European Communities and the Government of the United States of America on the application of positive comity principles in the enforcement of their competition

enshrined in the 1995 OECD Recommendation on cooperation between member countries in competition matters⁵³, to which both the EU and US subscribe. The positive comity provisions in the two agreements represent a commitment on the part of the European Union and the United States, where possible, to cooperate with respect to antitrust enforcement, rather than to always seek to apply their competition laws extraterritorially. The provisions are also aimed at avoiding unnecessary duplication of enforcement activity on the two sides of the Atlantic, and at ensuring that anticompetitive conduct is investigated by the authority best placed - notably in terms of fact-finding and the enforcement of remedies - to do so.

The 1991 agreement provides that "if a Party [the EU or US] believes that anticompetitive activities carried out on the territory of the other Party are adversely affecting its important interests, the first Party may notify the other Party and may request that the other Party's competition authorities initiate appropriate enforcement activities". The agreement goes on to provide that the "competition authorities of the

notified Party will consider whether or not to initiate enforcement activities, or to expand ongoing enforcement activities, with respect to the anticompetitive activities identified in the notification".

The 1998 agreement further clarifies the procedure to be followed with respect to a positive comity request (or "referral"). The agreement creates a presumption that, when anticompetitive activities are occurring in the whole or in a substantial part of the territory of one of the parties (the EU or US) and are affecting the important interests of the other party, the latter "will normally defer or suspend its enforcement activities in favour of" the former, at least pending the outcome of the requested investigation. This should happen particularly when the anticompetitive activities in question do not have "a direct, substantial and reasonably foreseeable impact on consumers" in the territory of the party deferring or suspending its activities.

The 1998 agreement specifies that a positive comity request can only be made if the allegedly anticompetitive activities are "impermissible under the competition laws" of the requested jurisdiction. At the same time, the agreement makes it clear that such a request "may be made regardless of whether the activities also violate the Requesting Party's competition laws".

The 1991 and 1998 agreements both provide that the jurisdiction dealing with a positive comity referral should keep the requesting jurisdiction closely informed of any important developments in its enforcement proceedings, within the constraints of its internal rules protecting the confidentiality of information. The two agreements also make it clear that a positive comity referral in no way detracts from the prosecutorial or enforcement discretion of either jurisdiction's authorities.

laws, OJ L 173, 18/06/1998, pp. 26 - 31.

⁵³ Revised Recommendation of the Council concerning Co-operation between Member Countries on Anticompetitive Practices affecting International Trade, 27 and 28.7.1995, C(95)130/FINAL.

La Cohérence entre la politique de concurrence et les fonds structurels

Nicoletta FALCONE et Paola ICARDI, DG COMP-G-1

1. La cohésion économique et sociale comme objectif de la Communauté européenne.

L'existence de disparités structurelles profondes parmi les régions de l'Union européenne et la volonté de concilier un système d'organisation économique basé sur les forces de marché ainsi que sur la liberté d'opportunités et d'entreprise, avec l'engagement en faveur des valeurs de solidarité interne et soutien réciproques, ont poussé la Communauté à introduire dans le traité de Rome, avec l'Acte unique européen de 1986, une nouvelle exigence politique: «la cohésion économique et sociale», un corollaire indissociable de réalisation du marché unique.

2. Les instruments de la cohésion économique et sociale: les fonds structurels et la politique de concurrence.

Les fonds structurels représentent l'instrument principal de la politique régionale communautaire, grâce auxquels l'Union européenne réalise la cohésion économique et sociale. Les objectifs poursuivis sont le développement et l'ajustement structurel des régions en retard de développement, la recon-

version économique et sociale des zones ayant des difficultés structurelles ainsi que l'ajustement et la modernisation des politiques et des systèmes d'éducation, formation et emploi⁵⁴. Ils se traduisent concrètement par la possibilité de la part des Etats membres d'obtenir des subventions communautaires qui complètent, selon le principe d'additionnalité, l'engagement financier des Etats membres.

Parallèlement aux Fonds Structurels, la politique de concurrence apporte une contribution essentielle et directe au renforcement de la cohésion économique et sociale de l'Union européenne. Son rôle se manifeste surtout à travers la politique des aides d'Etat, notamment aux articles 87 et 88 du traité CE (ex articles 92 et 93), et plus en particulier, à travers les aides d'Etat à finalité régionale. Les normes communautaires en matière d'aides

d'Etat prévoient un mécanisme qui interdit aux Etats membres d'octroyer des aides incompatibles avec le principe de libre concurrence, exception faite, entre autre, des cas où les dérogations prévues par l'article 87. § 3 alinéas a) et c) sont d'application. Ces cas prévoient respectivement que l'aide sera destinée à «favoriser le développement économique de régions dans lesquelles le niveau de vie est anormalement bas ou dans lesquelles sévit un grave sous-emploi» ou à «faciliter le développement de certaines activités ou de certaines régions économiques quand elles n'altèrent pas les conditions des échanges dans une mesure contraire à l'intérêt commun».

Le choix des régions éligibles aux aides en question devient donc un instrument pour une poursuite correcte de la cohésion: l'objectif prioritaire de la cohésion demande en fait un contrôle rigoureux sur les aides dans les régions plus riches afin de garantir que l'impact des interventions destinées au développement des régions moins favorisées de la Communauté ne soit pas annulé par des aides importantes octroyées dans les régions les plus favorisées⁵⁵.

A cette fin la Commission a établi un plafond d'intensité d'aide des régions admises à la dérogation prévue par l'article

⁵⁴ Conformément à ce qui a été prévu par l'Agenda 2000, les objectifs des fonds structurels pour la période 2000-2006 (les Fonds structurels de la troisième génération) ont été réduits de 7 à 3. Voir pour plus de détails le Règlement N1260/1999 du Conseil du 21 juin 1999 portant dispositions générales sur les Fonds structurels (JO C 176 du 9.6.1998, p. 1).

⁵⁵ Voir à ce propos la XXIIe Rapport sur la politique de concurrence, 1995, paragraphe 158.

87 § 3 alinéa a) du traité CE (régions en retard de développement, aussi appelé «sous-développement absolu») différent de celui relatif aux régions admises à la dérogation prévue par l'article 87 § 3 alinéa c) (régions développées, confrontées à des problèmes de reconversion, aussi appelé «sous-développement relatif»).

En outre, toujours dans le contexte de l'objectif de cohésion, la concentration géographique des aides vise la maximisation de leur efficacité économique et limite l'impact sur la concurrence.

3. La cohérence entre la politique de concurrence et les fonds structurels

L'action de l'Union dans le cadre des objectifs régionaux des fonds structurels d'une part, et la politique de concurrence dans le cadre des aides régionales, d'autre part, constituent donc deux éléments complémentaires et inséparables de la politique de cohésion. L'efficacité de ces deux politiques dépend en grande partie, de la cohérence de leur articulation, difficile à réaliser surtout à cause du nombre et de la diversité des protagonistes ayant des compétences, des échéances et des objectifs différents. La Commission a en fait une compétence exclusive en matière d'aides d'Etat et partage avec les Etats membre et le Conseil la compétence en matière de politique structurelle.

Nombreux ont été les instruments utilisés par la Commission afin de coordonner et aligner ces deux politiques et de réaliser la cohérence entre les décisions adoptées dans le cadre de la politique de concurrence, et les décisions relatives aux régions éligibles aux Fonds Structurels. En particulier, dans une Communication de 1998⁵⁶, la Commission a défini la stratégie nécessaire pour améliorer la coordination entre la politique en matière d'aides d'Etat et les Fonds structurels. Un des éléments centraux de cette stratégie vise l'augmentation de la cohérence entre les cartes relatives aux aides nationales à finalité régionale et celles relatives aux Objectifs 1 et 2.

En premier lieu, afin d'améliorer la coordination entre ces deux cartes, les Etats membres ont été invités à aligner la période de validité de la carte des aides régionales sur le calendrier d'intervention des Fonds Structurels⁵⁷.

En deuxième lieu, la Commission a demandé au Conseil d'appliquer rigoureusement le seuil de 75% du PIB par habitant pour identifier les régions présentant des retards

dans le développement au titre de l'Objectif 1. Une telle application rigoureuse garantit une totale cohérence entre ces régions et celles visées par l'article 87 § 3 alinéa a)⁵⁸.

En troisième lieu, le Règlement sur les Fonds structurels reprend les objectifs formulés par la Commission dans la Communication aux Etats membres sur la politique régionale et la politique de concurrence, tout en demandant aux Etats membres de garantir un niveau élevé de cohérence entre les propositions présentées au titre de l'Objectif 2 et celles au titre de l'article 87 § 3 alinéa c)⁵⁹. Sur la même ligne, le point 3.10.5 des Lignes directrices concernant les aides d'Etat à finalité régionale⁶⁰ avait déjà prévu à cet effet, la possibilité pour les Etats membres de proposer des zones éligibles à la dérogation 87 § 3 alinéa c) au titre de leur statut de zones éligibles aux Fonds structurels, toujours dans le respect des conditions de compacité et de population minimale. Dans ce contexte, pour la période 2000-2006, plusieurs Etats membre, comme la France, l'Italie, la Belgique, le Royaume Uni,

⁵⁶ Communication de la Commission aux Etats membres sur la politique régionale et la politique de concurrence (JO C 90 du 26.3.1998, p.3).

⁵⁷ Voir le point 5.3 des Lignes directrices concernant les aides d'Etat à finalités régionale (JO C 74 du 10.3.1998, p. 4).

⁵⁸ Voir le Règlement N1260/1999 du Conseil du 21 juin 1999 portant dispositions générales sur les Fonds structurels, considérant n. 16 et article 3, paragraphe 1.

⁵⁹ Voir le Règlement N1260/1999 du Conseil du 21 juin 1999 portant dispositions générales sur les Fonds structurels, considérant n. 16.

⁶⁰ JO C74 du 10.03.1998, p.4.



l'Espagne, le Danemark et la Suède ont proposé des zones éligibles à la dérogation 87 § 3 alinéa c) au titre de leur statut de zones éligibles à l'Objectif 2.

Certaines disparités entre les deux politiques restent toutefois présentes. La couverture géographique en termes de population éligible aux Fonds structurels est différente de celle éligible aux aides à finalité régionale, et ceci aussi bien dans Tableau ⁶¹

la période 1994-1999 que dans la période 2000-2006. Pour la période 1994-1999, 50,6% de la population de l'Union étaient éligibles aux aides structurelles communautaires, tandis que seulement 46,7% de la population étaient classés au titre de l'article 87 § 3 alinéa a) et c). De même, pour la période 2000-2006, les estimations provisoires indiquées dans le tableau ci-après montrent que la correspondance entre les zones

couvertes dans les deux cas n'est toujours pas réalisée : même si la couverture des Fonds structurels est devenue globalement inférieure à celle des aides d'Etat, certaines zones éligibles aux Fonds continuent à ne pas être couvertes par des aides d'Etat à finalité régionale (6,6% pour la période 1994-1999 et 5,6% pour la période 2000-2006).

Cohérence entre les zones "Fonds Structurels" et les zones "Aides d'Etat"						
<i>en % de la population de l'Union</i>						
	Régions éligibles aux Fonds Structurels		Régions non éligibles aux Fonds Structurels		Totaux	
	1994-99	2000-06	1994-99	2000-06	1994-99	2000-06
Zones où des aides régionales nationales sont autorisées	44,0	35,8	2,7	6,9	46,7	42,7
Zones où des aides régionales nationales ne sont pas autorisées	6,6	5,6	46,7	51,7	53,3	57,3
Totaux	50,6	41,4	49,4	58,6	100,0	100,0
<i>Sources: Eurostat, DGCOMP, calculs DGREGIO</i>						
<i>Période 2000-2006: estimations basées sur une comparaison géographique au niveau NUTS5</i>						

Par contre, le fait qu'un certain pourcentage de la population vive dans des régions couvertes par des régimes d'aide à finalité régionale sans être éligibles aux Fonds structurels (2,7% pour la

période 1994-1999 et 6,9% pour la période 2000-2006) constitue une condition favorable à la cohérence entre la politique des aides régionales et les interventions des Fonds structu-

rels puisqu'elle garantit la flexibilité des choix des Etats membres en matière de politique régionale en mettant à leur disposition une marge de manœuvre pour poursuivre des

⁶¹ Il s'agit d'estimations provisoires.

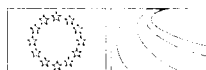
politiques régionales qui leur sont propres, au-delà des zones définies conjointement pour l'application de la politique régionale communautaire.

4. Conclusions

Grâce aux derniers instruments législatifs disponibles, des nombreux progrès ont eu lieu depuis que la politique régionale

communautaire a été lancée. La concentration des ressources dans les régions problématiques et la cohérence des initiatives de solidarité en matière de développement de l'économie régionale deviennent les principes clefs à la base de l'efficacité des politiques de cohésion. Une telle stratégie devient encore plus importante si l'on considère que la Communauté européenne

s'ouvrira à au moins six nouveaux Etats dans le cours de la programmation 2000-2006. L'entrée des nouveaux pays augmentera les disparités en termes de revenu et d'indicateurs socio-économiques et une application rigoureuse des principes susmentionnés sera essentielle.



ANTI-TRUST RULES

Application of Articles 81 & 82 EC and 65 ECSC

Main developments between 1st June and 30th September 2000

Commission fines ADM, Ajinomoto, others in lysine cartel

Georg DE BRONETT, DG COMP-C-2

The Commission has fined Archer Daniels Midland, Ajinomoto and three other companies a total of almost 110 million Euro for operation a global price-fixing cartel for lysine. The decision highlights the Commission's determination to fight cartels, the most damaging of all anti-competitive practices.

Lysine is the most important amino acid used in animal foodstuffs for nutritional purposes. Amino acids are building blocks of protein. They can be of vegetal or animal origin (e.g. soybeanmeal or fishmeal). They can also be manufactured. The five cartel participants manufacture and sell synthetic amino acids. The availability of synthetic amino acids enables nutritionists to compose protein diets the better meet the animal's feed requirements.

The Commission's extensive investigation found that Archer Daniels Midland Co (USA), Ajinomoto Co (Japan), Cheil (Korea), Kyowa Hakko (Japan) and Sewon (Korea) fixed lysine prices world-wide, including in the European Economic Area. They have also fixed sales quota for that market and operated an information exchange in order to

underpin these quotas from at least July 1990 to June 1995.

The Commission considers that the cartel represents a very serious infringement of the EC competition rules and justifies heavy fines. The leading players in the cartel, Archer Daniels Midland and Ajinomoto are fined 47.3 million Euro and 28.3 million Euro respectively. The other three cartel participants, Cheil, Kyowa and Sewon receive a fine of 12.2 million, 13.2 million and 8.9 million Euro respectively.

This case started in July 1996, shortly before several cartel participants were charged by the US antitrust authorities with engaging in illegal conspiracy. In July 1996, Ajinomoto decided to inform the Commission about the existence of the cartel covering a period from Archer Daniels Midland's entry into the EEA lysine market (June 1992) up to June 1995.

Ajinomoto's decision came right after the Commission had adopted its Leniency Notice on the non-imposition or reduction of fines in cartel cases (O.J. C 207 of 18 July 1996). This Notice sets out the conditions under which companies co-operating with the Commission

during its investigation into a cartel may be exempted from fines or granted reductions in the fines which would otherwise have been imposed upon them. Three other cartel participants started to co-operate with the Commission at a later stage.

Pursuant to the Leniency Notice, the Commission has granted four co-operating companies significant reductions in the fines.

As said, Ajinomoto was the first to come in and give decisive evidence of the cartel. However, it was also a ring-leader in the cartel and failed to inform the Commission of an earlier period of the cartel involving the then three Asian producers Ajinomoto, Kyowa and Sewon (dating back to July 1990). The Notice provides for a maximum reduction in the fine of 50% in such a case. The Commission takes the view that it can grant this maximum reduction to Ajinomoto.

The Commission also grants a 50 % reduction to Sewon. This company informed the Commission about the earlier period of the cartel while also producing further evidence of the later cartel.

Cheil and Kyowa also provided the Commission with evidence confirming the existence of the infringements. They receive smaller reductions of 30 % each.

Archer Daniels Midland did not co-operate with the Commission during the investigation.



However, it did not contest the facts set out in the Commission's Statements of Objections. For this, the company receives a 10 % reduction of the fine.

Competition Commissioner Mario Monti said :

« This decision is rigorous and balanced. On the one hand, the Commission needs to be tough on these sort of hardcore cartels. That is why heavy fines are in order here. They must have a deterrent effect. On the other hand, we do take the Leniency

Notice at heart. This is borne out by the significant reductions in the fines for Ajinomoto and Sewon, the two companies who co-operate most with my services. »

Commission prohibits discriminatory landing fees at Spanish airports

Oliver Stehmann, DG COMP-D-2

1. Introduction

The Commission has been examining landing fees at European airports for a number of years. On 28 June 1995 it ruled that the system of discounts operated at the main Brussels airport infringed EU law. Subsequently most Member States fell in line with the Commission's viewpoint and changed their system of landing fees. Most recently, the French, Irish and Swedish airport authorities agreed to carry out the necessary changes. Nevertheless, two further decisions were taken against the Portuguese and Finnish airport authorities on 10 February 1999⁶². As one

further step in this procedure, on 26 July 2000, the European Commission adopted a decision against the system of landing fees applied at Spanish airports which it found to discriminate in favour of national airlines.

2. The Spanish system of landing fees

The Spanish airport authority, AENA⁶³, which is a public enterprise, has been granted the exclusive right to administer the airport infrastructure of all 41 commercial airports on the Spanish territory. In return for the services provided in

connection with the landing and take-off of planes a fee has to be paid by the airlines. The landing fees as well as the modulations are set by loyal decrees and by law.⁶⁴ Three categories of airports are distinguished according to the importance of their traffic⁶⁵. Different landing fees are established for national flights based on the maximum take-off weight of the plane and based on the category of airports. For instance, the fee for an aircraft below 10 tonnes at a first category airport amounts to 694 pesetas/t. For an airport in the third category it amounts to 521 pesetas/t.

The Spanish law furthermore distinguishes between dome-

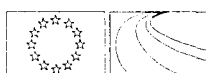
⁶² While the Portuguese authorities are challenging the Commission's decision in the European

Court of Justice, the Finnish authorities have undertaken to respect the Commission's decision and change their system of landing fees by January 2001.

⁶³ AENA: Aeropuertos Españoles y Navegación Aérea

⁶⁴ The royal decrees 1064/1991 and 1268/1994 as well as law 41/1994

⁶⁵ For instance, in the first category belong Madrid-Barajas, Palma de Mallorca, Barcelona, Gran Canaria, Malaga, Tenerife-sur, Alicante, Lanzarote, and in the second category Fuerteventura, Bilbao, Santiago de compostela, Tenerife-norte, Menorca etc.



➤ ANTI-TRUST RULES

stic, intra-Community and extra-Community flights. In the case of an aircraft below 10 tonnes at an airport of the first category the fee amounts to 940 pesetas/t. in the case of extra-Community flights and 751 pesetas/t. for intra-EEA flights. For every category of airports and for every weight category of planes, landing fees are higher for intra-

Community flights than for domestic flights. The highest fees are charged for extra-Community flights.

As a second measure, the law grants discounts according to the number of landings per month on a specific airport. For the first 50 landings no discounts are granted. For the 51st to the 100th landing a

discount of about 9% is granted. The discounts increase further with the number of landings per month. As can be seen from the following table, the most important discounts are only available for airlines which have more than 200 landings per month.

Number of operations per month	Discount (%)
1-50	0
51-100	9 %
101-150	17 %
151-200	26 %
+200	35 %

Discounts on landing fees at Spanish airports in the year 2000.

3. The relevant market

The product market

The relevant market is defined as the market for services linked to access to airport infrastructure for which a fee is payable. More specifically, such services are linked to the exploitation and maintenance of runways, the use of taxiways and aprons, and approach guidance for civil aircraft.⁶⁶

⁶⁶ This corresponds to the market definition chosen in previous decisions, as Brussels National Airport: Commission Decision 95/364/EC of 28 June 1995, OJ L 216, 12.9.1995, p. 8., and the two Commission decisions of 10 February 1999 on landing charges

The geographic market

The 41 airports administered by AENA are interchangeable only to a limited extent and each can therefore be regarded as a distinct geographic market. The distances between the different airports are considerable and each has its own, well-defined catchment area. Airlines running domestic or intra-EEA flights to and from Spain have no option, therefore, but to use the airports administered by AENA, along with the airport facility access

applied by the Finnish and Portuguese Civil Airport Authorities: Commission Decision 99/198/EC and 99/199/EC of 10 February 1999, OJ L69/24, 16.3.1999, p.26-27.

services provided in these airports.⁶⁷

4. The Commission's Assessment

AENA is a public undertaking in the sense of Article 86(1) of the EC Treaty and the relevant laws and decrees fixing landing fees at Spanish airports are a state measure within the meaning of

⁶⁷ The only international airport not administered by AENA that could serve the same geographic area, i.e. Lisbon, is several hundred kilometers away from Madrid and other Spanish airports and, moreover, it is not linked by an adequate road or rail infrastructure. Thus it does not constitute a realistic alternative.



Article 86(1). There is no doubt that AENA, whose core activity is to provide airlines with access services to civil airport facilities in return for a fee, is, according to the definition of the Court, an undertaking within the meaning of Article 82 of the Treaty.

Dominant position

As the only means available to a carrier for providing air transport services to a given town, airports have a dominant position as regards a very high proportion of their traffic. The airline has no choice and, as a result, the airport faces little risk that the airline would change the airport as a result of a lower fee offered elsewhere. Thus, each of the AENA-managed airports is in a dominant position as there is normally only one commercial airport for each geographic market and given that high entry barriers exist with regard to the construction of new airports. Since AENA has the exclusive right to administer these airports, it holds a dominant position on the market for aircraft landing and take-off services.

Substantial part of the common market

In 1999, the AENA-administered airports had a total traffic of 63 million passengers of which intra-Community flights account for approximately 32 million passengers. These airports handled more than 584 000 tonnes of freight. AENA holds a dominant position on the market

for aircraft landing and take-off services on all the 41 airports for commercial civil traffic in Spain. Together they cover the whole of Spain, which is a substantial part of the common market.

Abuse of a dominant position

When assessing the abuse, the Commission looked at both elements of the Spanish landing fees, i.e. the differentiation according to the origin of the flight and the discounts granted, separately.

(a) Discounts based on landing frequency

Rebates as such are a normal business practice if offered by a company which is not dominant. They only may become a problem if granted by a dominant firm. The latter can use discounts to distort competition in the market. Article 82 requires that a dominant firm must treat its clients equally, as long as the transactions are comparable. Hence, there must be an *objective justification* for any difference in treatment of its various clients by an undertaking in a dominant position. In the case of landing of planes, for instance, such an objective justification could be economies of scale in carrying out the landing services, the aim to reduce traffic noise or air congestion.

The effect of the discount system is that airlines are treated differently in terms of the price charged for landing and take-off

services. Although the discounts offered by AENA apply to all airlines, de facto, domestic airlines benefit considerably more than foreign ones. Every landing after the 200th qualifies for a discount of 35%, with no limit on the number of landings thereafter. Thus, airlines which carry out significantly more than 200 landings a month, such as Iberia, benefit from a proportionally higher overall discount. Only Spanish airlines, as Iberia, Binter Canarias, Spanair, Air Europa or Air Nostrum benefit from the largest category of discounts. The other airlines receive average discounts, in return for equivalent services provided by AENA, which are considerably smaller. In 1999, Iberia alone received about 62% of all discounts on landing fees granted by AENA.

In the Commission's view, there is no objective justification for this difference in treatment. The services provided by AENA, such as approach control and use of apron areas, require the same work irrespective of the individual airline. In the case of landing and take-off services economies of scale do not exist. The services provided do not depend on the individual owner of the aircraft or whether they are rendered to the first or the 10th aircraft of the same airline.

With regard to the Canary Islands, Spain justified the discounts on the grounds that this would foster regional and cohesion policy objectives. It would promote the

Islands as a tourist destination. These justifications were refuted in the Commission's decision. The goal of promoting the Canary Islands as a tourist destination could be achieved by non-discriminatory discounts accessible to all airlines operating services to and from the Canary Island airports⁶⁸.

Thus, the Commission concluded that by applying the discounts as described above, AENA treats airlines differently without objective justification. It thereby imposed on some of them a competitive disadvantage, which constitutes an abuse of dominant position in the sense of Article 82(2)(c).

(b) The differentiation of charges according to type of flight (domestic or international)

A similar reasoning applies to the differentiation of tariffs depending on whether it is a domestic or an intra-Community flight. Also in this case the effect

is to treat airlines differently for the provision of equivalent landing and take-off services. This places airlines operating EEA services at a competitive disadvantage in comparison to airlines providing domestic services. The differentiation of landing fees according to the origin of the flight therefore constitutes another abuse of a dominant position within the meaning of Article 82 (2)(c).

Effect on trade between the Member States

In line with previous jurisprudence⁶⁹, the Commission concluded that, given the volume of traffic between Spain, the Community and the EEA, there is an appreciable effect of the discussed measures on cross-border trade. Taken all airports together, in 1999 with 32 million passengers the traffic volume between Spain and other Member States of the Community exceeds the domestic traffic volume of 25 million passengers, respectively. In the case of the Canary Islands, the intra-Community traffic is more than twice as large as the intra-Spain traffic. Also the traffic between Spain and EEA

countries is substantial. In 1998 there were about 871 thousand passengers travelling on direct flights between Norway and Spain.

5. Conclusions

As a result of the above, the Commission found that the system of discounts and different landing fees according to the origin of the flight, as established in a royal decree by the Spanish government, discriminates in favour of national airlines. There does not exist an objective justification for such discriminatory treatment. Since it is enacted by the Spanish State, the latter is therefore infringing Article 86 (1) in conjunction with Article 82 of the Treaty. As a result, the Spanish government has been given two months to report to the Commission on how it will abolish the criticised pricing scheme.

⁶⁸ In addition, it is not obvious that the present system of landing fees would in fact help developing the Canary Islands as a tourist destination. For Canary Islands, the intra-Community traffic is more than twice as large as the intra-Spain traffic. As pointed out above, the present discount system de facto discriminates against (non-Spanish) European airlines. By imposing higher cost on European airlines, the discount system also generates higher travelling cost for the Canary Island's main source of tourists, i.e. European tourists from outside Spain.

⁶⁹ In its judgement in the Corsica Ferries case, the Court of Justice recognised that discriminatory practices which "affect undertakings providing transport services between two Member States, (...) may affect trade between Member States." Case C-18/93 Corsica Ferries Italia Srl v. Corpo dei Piloti del Porto di Genova [1994] ECR I-1783.

Adoption of Regulation 823/2000 renewing the block exemption for liner shipping consortia

Charles WILLIAMS, DG COMP-D-2

Commission Regulation (EC) No 823/2000 of 19 April 2000⁷⁰ contains a block exemption for liner shipping consortia valid for five years. It renews the block exemption contained in Commission Regulation (EC) No 870/95⁷¹ the five year validity of which expired on 25 April 2000. The new Regulation makes some changes to the block exemption; these are described below.

CONCEPT AND IMPORTANCE OF CONSORTIA

A consortium is a grouping of shipping lines which cooperate to provide a joint liner shipping service. Consortia represent a method of organisation of liner maritime transport which came about following the introduction of containers at the end of the 1960s, which necessitated the construction of vessels of much greater size so as to realise economies of scale and to improve productivity. The size of the investment required to acquire and operate such vessels was greater than the financial resources of the majority of individual shipowners. The

development of container services therefore brought about the need for cooperation between shipowners and for a rationalisation of their activities. This cooperation has usually taken the form of consortia.

Although there is a progression towards consortia as the predominant form of industrial organisation in the sector, liner conferences, the traditional form of organisation for liner shipping, continue to exist. Shipping lines within a conference agree common freight rates for sea transport. Council Regulation (EEC) No 4056/86⁷² contains a block exemption permitting such rate fixing by conferences. Most consortia operate within conferences and their members thus are operating under a conference tariff.

THE COUNCIL ENABLING REGULATION

Council Regulation (EEC) No 479/92 of 25 February 1992 empowered the Commission to grant a block exemption for liner shipping consortia.

This favourable position is explained by the advantages brought about by consortia. In general they help improve not only the productivity but also the quality of liner transport services offered to transport users by rationalising the activities of the member companies and by the economies of scale which they bring about.

THE FIRST BLOCK EXEMPTION: REGULATION 870/95

Commission Regulation 870/95 of 20 April 1995 granted a block exemption for a period of five years.⁷³ The objective of the Regulation was to create a framework which would give shipping lines flexibility whilst ensuring that shippers received a fair share of the benefits. In order to take account of the wide variety of consortia, the Commission did not adopt the classic system of lists of prohibited 'black' clauses and permitted 'white' clauses. Instead, the Regulation exempts all agreements whose objective is the joint operation of liner shipping services, provided they fulfil the conditions and obligations set out in the Regulation.

Under Regulation 870/95, the Commission approved eleven consortia under the opposition procedure, and in several other cases the Competition DG sent comfort letters confirming that a

⁷⁰ OJ L 100, 20.4.2000, p. 24. Press release IP/00/404 of 25 April 2000.

⁷¹ OJ L 89, 21.4.1995, p. 7.

⁷² OJ L 378, 31.12.1986, p. 4.

⁷³ This period is laid down by Art. 2 of Reg. 479/92.



notified agreement conformed with the block exemption. The Commission also approved, under the objections procedure laid down in Article 12 of Regulation 4056/86, four consortium arrangements that fell outside of the block exemption.

PROCEDURAL STEPS LEADING TO THE ADOPTION OF THE NEW REGULATION

As a first step in preparing for the expiry of Regulation 870/95, DGIV prepared a "Report on Commission Regulation 870/95".⁷⁴ The Report explained the adoption of the Regulation, recorded points of interpretation that had arisen in the course of applying the Regulation and set out some initial options for the renewal of the block exemption.

The Report was sent for comment to the European Shippers' Council (ESC), the European Community Shipowners' Association (ECSA) and the European Maritime Law Organisation (EMLO), as well being placed on the DGIV internet site. Five sets of comments (including from the ESC and ECSA) were received, and these were considered when drawing up a preliminary draft Regulation.

As required by Articles 4 and 5 of the enabling Council Regulation 479/92, the

Commission consulted the Maritime Transport Advisory Committee both before and after the preliminary draft Regulation was published in the Official Journal of 31 December 1999⁷⁵ for third party comments.

Third party comments were received from ECSA (European Community Shipowners' Associations), CLECAT (European Liaison Committee of Freight Forwarders, Europäisches Verbindungscomité des Speditions- und Lagereigewerbes, Comité de Liaison Européen des Commissionnaires et Auxiliaires de Transport), and BMLA (British Maritime Law Association). The comments welcomed the renewal of the block exemption, and made suggestions for further amendments which are explained below.

REGULATION 823/2000

The reasons for which the block exemption was adopted in 1995 are still valid. The application of the Regulation 870/95 worked well in practice. The Commission therefore decided to renew the block exemption by way of a new Regulation, largely replicating Regulation 870/95, valid for a further period of five years. In particular, the Commission neither changed the definition of consortia that fall within the scope of the block exemption, nor changed the list of exempted activities.

Article 1 of Regulation 823/2000⁷⁶ limits the scope of the Regulation to international liner services, thus excluding cabotage services operating solely within a single Member State.

Article 2 of the Regulation contains a broad definition of consortia. Article 3 contains an exhaustive list of exempted activities. The new Regulation includes amendments so as to clarify it in line with the Commission's interpretation of Regulation 870/95. Regulation 823/2000 thus provides that:

- (1) the block exemption also applies to consortia operating on more than one trade (Article 1(1)), and the market share thresholds are required to be met in respect of each market upon which such a consortium operates (Articles 6 and 7);
- (2) exclusivity clauses (that is, obligations on the consortium members to use only those vessels allocated to the consortium service on the trade route in question and to refrain from chartering slots on vessels belonging to third parties) and third party clauses (that is, provisions restricting the ability of the parties to assign, space charter or sub-space charter to other carriers in the relevant trade except with the prior

⁷⁴ Working Paper of DGIV, 28 January 1999, <http://europa.eu.int/comm/dg04/entente/other.htm>.

⁷⁵ OJ C 379, 31.12.1999, p. 13.

⁷⁶ The order of Articles 1 and 2 of Regulation 870/95 have been inverted in the new Regulation.



consent of the other parties) are considered to be ancillary activities and thus to be exempted (Article 3(3)).

In the light of the comments from third parties, the following further changes were made:

- (1) in Article 3(2)(d), the reference to "tonnage" pools was amended to become a reference to "cargo" pools. In this context, "tonnage" means a quantity of cargo,⁷⁷
- (2) in 3(3)(b), the exempted form of third party clause is amended to become an obligation not to assign or charter space to other vessel-operating carriers. This change is to avoid that freight forwarders and other non vessel-operating intermediaries are caught by a third party clause.

Article 4 is unchanged and provides for the non-applicability of the block exemption for any agreement which seeks to freeze the use of a fixed percentage of capacity by members of the consortium.

The following four sets of conditions and obligations are attached to the exemption so as to guarantee that the conditions of Article 81(3) are fulfilled.

First, Article 5 (which is unchanged) lays down a condition that the consortium is in one or more of the three situations described below:

- there is effective price competition between the members of the conference within which the consortium operates (as a result of independent rate action),
- there exists within the conference within which the consortium operates a sufficient degree of effective competition in terms of services provided between consortium members and other conference members that are not members of the consortium,
- consortium members are subject to effective competition from non-consortium lines, whether or not a conference operates in the trade in question.

Second, Articles 6 and 7 lay down a condition relating to the market shares held by a consortium. There is a system of three different levels of market share. Any consortium with market shares on all markets below 30% (if within a conference) or 35% (if operating outside a conference) is automatically exempt if it fulfils the other conditions of the Regulation. If a consortium has a market share above 30/35% on any market but below 50% on all markets, the consortium will benefit from the block exemption if it is notified to the

Commission and the Commission does not oppose exemption within six months. A consortium with a market share above 50% on any market may be notified to benefit, if appropriate, from an individual exemption.

The most important change that Regulation 823/2000 made to the block exemption as compared to Regulation 870/95 is to refer to market share thresholds in the place of trade share thresholds (ie, the share of trade held by the consortium between the pairs of ports that it actually serves) referred to in Regulation 870/95. Market share is the usual indication of market power used in competition legislation. The trade share criterion was adopted in the previous Regulation because shipping companies had considered that market shares would be difficult to calculate; experience had however shown that shipping companies were able to provide market shares.

Third, Article 8 (which is unchanged) lays down additional conditions, so for example the consortium must preserve the right of each individual line to offer individual service arrangements. Article 8(2) stipulates that the consortium agreement must allow an individual line to withdraw from the agreement following a six-month notice period. This serves to ensure that the trade is kept flexible and therefore as competitive as possible.

⁷⁷ The quantity of cargo is for bulk cargoes traditionally expressed as a number of tonnes or tons, and for containerized cargoes normally expressed as a number of TEU (twenty foot equivalent units).

Fourth, Article 9 (which is unchanged) contains obligations attaching to the exemption, notably that there shall be real and effective consultations between the consortium and the shippers or other transport representatives.

Article 10 is unchanged and contains an exemption for agreements, between transport users and consortia exempted under Article 3, which concern the use of scheduled maritime transport services.

Article 12 is unchanged and empowers the Commission to withdraw the block exemption from any consortium exempted under the Regulation which is, nevertheless, found not to comply with the requirements of Article 81(3) or which is prohibited by Article 82.

The following comments were also made by third parties, but were not taken up in Regulation 823/2000:

- (1) a suggestion to reduce the six-month period for the Commission to react under the opposition procedure,
- (2) in relation to the notice periods for withdrawal, suggestions:

- to lengthen the initial periods of 18 months or 30 months,
- to start the initial period not from the entry into force of the agreement, but from the day that a consortium commences operations or obtains Commission approval, whichever is the later,
- to extend the notice period from six months to twelve months, at least for highly integrated consortia.

The Commission considered that the existing provisions relating to notice periods for withdrawal draw an appropriate balance between two conflicting considerations. On the one hand, setting up a consortium service requires investments for which it is appropriate to allow an initial period that allows reasonable protection to the consortium service. On the other hand, the possibility of a party withdrawing from a consortium and becoming a competitor within a reasonable period is an element of potential competition, and a factor ensuring flexibility to allow services readily to adapt to meet changing market conditions.

Eleven consortia were exempted under the opposition procedure for a period until the expiry of Regulation 870/95. That procedure enabled the Commission to check that those consortia were subject to effective competition. There was no indication that circumstances had changed such that those consortia were no longer subject to effective competition. In order to avoid the burden of renewed notifications, Regulation 823/2000 therefore provides that such consortia continue to be exempted (Recital 27, Article 13(2)); such agreements remain subject to obligations (Article 9) and to the Commission's power to withdraw the exemption (Article 12);

It was also necessary to make provision for notifications that existed at the time when Regulation 870/95 came to an end. Regulation 823/2000 therefore provides that a notification made under the opposition procedure of Regulation 870/85 and in respect of which the period of six months had not expired when Regulation 870/95 came to an end would automatically be treated under the opposition procedure of the new Regulation (Article 13(3)).

The Commission persuades Saeco to implement an international guarantee for its products and closes the complaint file

Robert MATHIAK, DG COMP-F-1

The Commission has addressed the problem of territorial restrictions of guarantees offered by manufacturers on many occasions and has always insisted that, where a manufacturer offers a guarantee for the products bearing his trademark, he has to make sure that the guarantee can be invoked in his distribution network in the whole European Union. The Commission did so in several decisions concerning distribution systems relating to consumer goods⁷⁸, and Regulation No. 1475/95⁷⁹ concerning car distribution contains a provision which explicitly makes the exemption dependent on a Community-wide guarantee scheme⁸⁰.

Territorial restrictions such as a clause under which the guarantee is valid only in the Member State where the relevant good has been purchased and into which it had been imported directly by the official importer, act as a

disincentive for parallel trade between Member States and discourage consumers from buying products in a Member State other than the one in which they are resident. They are a form of territorial protection for distributors and constitute an obstacle to the inter-penetration of markets. Agreements relating to the distribution of the relevant products which contain such arrangements thus constitute a restriction of competition under Article 81 (1) of the EC Treaty. The Court of Justice has confirmed this position⁸¹.

The case against Saeco, a leading manufacturer of coffee machines, had been opened following a complaint brought by EK Großeinkauf, a purchasing co-operative based in Germany. EK buys big quantities of coffee machines from Saeco's distributor in Germany and sells them to its members in Germany and Austria. At the time, the

guarantee certificates used for Saeco products contained a clause according to which a warranty was only granted in the country of purchase and under the condition that the relevant machine had been imported directly by the official importer. On that basis, the Austrian distributor refused to deal with warranty claims for machines which had originally been sold by the German distributor, and both the German and the Austrian distributors tried to prevent deliveries by EK to Austria referring to the limited validity of the guarantee.

Following the complaint, however, Saeco decided to change its guarantee system so as to make sure that customers within the EEA may invoke the guarantee regardless of the place of purchase and of the Member State to which it was exported originally. On intervention by the Commission, Saeco took all necessary steps to ensure the full implementation of the new system, including the substitution of old guarantee certificates by new certificates, so that consumers now have certainty about their rights. This allowed the Commission to close the case.

⁷⁸ See XVI. Report on Competition Policy 1986, point 56, with further references.

⁷⁹ OJ L 145 of 29 June 1995

⁸⁰ See Article 5 (1) (1) (a) first indent and Article 6 (1) (7).

⁸¹ See Hasselblad (GB) Ltd. / Commission, Case 86/82, judgement of 21 February 1984; SA ETA Fabriques d'Ébauches / SA DG Investment, Case 31/85, judgement of 10 December 1985.



Amende contre les Editions Nathan sur ses accords de distribution de matériel éducatif

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Le 5 juillet 2000, la Commission a adopté une décision d'infraction avec amendes contre l'entreprise française Editions Nathan concernant ses accords de distribution dans une procédure intéressant la France, la Belgique, l'Italie et la Suède.

Editions Nathan fabrique et distribue du matériel éducatif et des manuels scolaires, principalement en France. Les accords en cause concernent uniquement le matériel éducatif destiné à la petite enfance, qu'un réseau de distributeurs indépendants vend dans la quasi totalité des Etats membres. Ces produits sont achetés comme supports pédagogiques par les crèches, écoles maternelles et hôpitaux, un marché estimé à environ 600 millions d'euros par an dans l'Union européenne.

L'enquête de la Commission, lancée à l'initiative des autorités françaises, a révélé que ces accords empêchaient les distributeurs de commercialiser les produits Nathan en dehors de leurs territoires exclusifs, protégeaient ces territoires contre les ventes d'autres distributeurs et restreignaient leur liberté de fixer les niveaux de prix et conditions commerciales de revente.

De tels accords visant à cloisonner les marchés entre Etats Membres constituent une violation de l'article 81 du traité CE. Ils portent préjudice aux établissements scolaires qui auraient pu profiter de la concurrence entre distributeurs de différents pays, y compris en France, où Nathan est l'un des leaders du marché. Cette pratique a pénalisé les écoles et autres collectivités étant donné que les distributeurs étrangers en étaient exclus. En dernier ressort, ce sont les contribuables et usagers parents d'enfants qui subissaient le préjudice.

Par delà la caractérisation de l'infraction stricto sensu, cette affaire suscite deux remarques principales : d'une part, elle réitère que la Commission ne tolérera pas des accords verticaux qui empêchent les consommateurs d'obtenir tous les bénéfices découlant de l'interpénétration économique voulue par les Traités. De tels accords restrictifs sont explicitement visés par la récente réforme des règles applicables aux accords de distribution, qui exclut du bénéfice de l'exemption par catégorie les restrictions

verticales a priori les plus dommageables⁸².

D'autre part, la Commission a toutefois tenu compte aussi du fait que la mise en œuvre des accords illicites, par ailleurs limitée, a été prouvée uniquement en France et Belgique. Quoique significatives, les parts de marchés dans les territoires concernés restaient inférieures à 15%. L'infraction a été qualifiée comme peu grave en conséquence. Par ailleurs, Editions Nathan et son distributeur belge Bricolux SA, ont aussi activement coopéré pendant la procédure. La forte réduction du montant de base de l'amende en raison de la coopération des parties, à savoir 40%, souligne l'intérêt qu'ont les entreprises, dans le respect des garanties procédurales, à simplifier l'instruction des affaires les concernant.

⁸² Règlement de la Commission (CE) 2790/99 du 22.12.1999, Lignes Directrices sur les Restrictions Verticales, IP/00/520 et site Internet DG Concurrence.

Judgement by the Court of First Instance of 6 July 2000 concerning Commission Decision 98/273/Volkswagen of 28 January 1998

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History

By decision of 28.1.1998⁸³, the Commission had imposed a record fine of € 102 million on Volkswagen AG, for having committed a very serious infringement of Article 81 lasting for more than 10 years. This fine was the highest ever imposed by the Commission on a single undertaking for infringement of competition rules.

The Commission had found that Volkswagen AG, in conjunction with its subsidiaries Audi AG and Autogerma SpA, their common importer for Italy, had developed a strategy, by implementing a set of measures⁸⁴, aimed at preventing

customers from Germany and Austria in particular, from buying new cars in Italy for immediate re-export.⁸⁵ Such exports had become attractive following the substantial depreciation of the Italian Lira, which took place in 1992 and in 1995. Block Exemption Regulation No 1475/95⁸⁶ allows manufacturers and/or their importers to prevent sales to non-authorised resellers, but sanctions obstructions of sales to end consumers and authorised dealers of other Member States. These provisions aim at promoting intra-brand competition within the distribution network of a given make, and shall assure the right of consumers to buy a car in the Member State of their choice, in taking advantage of the benefits of the Single Market. Volkswagen AG had appealed against this decision in April

1998 with the Court of First Instance (hereafter: Court).

MAIN FINDINGS IN THE JUDGEMENT OF THE COURT OF FIRST INSTANCE

By its detailed judgement of 6 July 2000⁸⁷, the Court largely confirmed the Commission decision. It however reduced the fine to € 90 million.

Volkswagen based its appeal essentially on five grounds. While two of them concerned possible errors of fact or of law in applying Article 81, the remaining three grounds were most of a procedural nature and referred to the principle of good administration, the obligation of reasoning, and the right of being heard. An additional ground aimed at a reduction of the fine, since Volkswagen considered the fine imposed by the Commission as excessive.

The first ground essentially concerns the set of export restrictions establishing the infringement of Article 81, as identified by the Commission in its decision. The Court confirmed that Volkswagen had applied a restrictive bonus policy, by refusing bonus payment for export sales in

⁸³ See Commission Press Release IP/98/94 of 28 January 1998.

⁸⁴ The measures found by the Commission, which were part of a general strategy, comprised a restrictive margin policy, a restrictive bonus policy, a restrictive supply of the Italian market, restrictions on cross-deliveries, termination of dealer contracts, and the obligation imposed on foreign end consumers to sign a declaration to

sell the car only under certain conditions.

⁸⁵ See also Commission Press Release IP/00/725 of 6 July 2000 concerning this judgement.

⁸⁶ Commission Regulation (EC) No 1475/95 concerning motor vehicle distribution and servicing agreements, OJ L 145, 29.6.1995.

⁸⁷ See Press Release 50/2000 by the Court of First Instance of 6 July 2000 concerning case T-62/98 Volkswagen AG vs. Commission of the European Communities. Volkswagen has lodged an appeal against the judgement of the CFI with the European Court of Justice.



excess of 15% of total sales⁸⁸. As concerns the restrictive supply policy, by which Volkswagen aimed at discouraging dealers from selling for export, the Court confirmed the Commission's findings, saying that a strategy aiming at obstructing re-exports from Italy, and thus foreclosing this market, had been applied by Volkswagen.⁸⁹ As to the behaviour of dealers towards non-resident customers in particular, who were, through the measures taken by Volkswagen and Autogerma, discouraged to sell to such clients, the Court pointed in particular to the substantial number (more than 60) of complaining letters from consumers, in particular German and Austrians, who represented evidence to the great difficulties which had existed with respect of buying a car in Italy.⁹⁰

The Court however annulled the decision in respect to two measures. Pursuant to the Court, the Commission could not sufficiently prove the existence of a split-margin system, by which a fraction of the dealer's margin earned from the sale of a car was withheld in case of export sale, and could not present sufficient evidence either that the termination of dealer contracts were measures aimed at discouraging export sales to end consumers and other Volkswagen dealers.

⁸⁸ Pts. 49, 50, 59.

⁸⁹ Pts. 79, 88, 93.

⁹⁰ Pts. 105, 115, 116, 118.

As concerns Volkswagen's submission, saying that the measures undertaken only aimed at reducing the high number of sales to non-authorised resellers, the Court rejected this argument, by referring to documents which clearly show that re-exports in general, including sales to consumers or dealers of other Member States, were the subject of the measures.⁹¹

Object and effect of a restriction of competition within the reasoning of Article 81

One important point of law to underline is that the Court confirmed, by referring to its existing case law, that the effects of the export restrictions in place need not to be established for the application of Article 81, if it can be proved that the object of the measures is to restrict competition, something which is very clear for measures aiming at limiting parallel export and thus at partitioning markets.⁹² The Court thus confirmed that the object of a measure is already sufficient to establish an infringement.⁹³ Article 15 of Regulation No 17 does not specify either that the

⁹¹ Pts. 133 to 135.

⁹² Pts. 178, 181.

⁹³ In the same sense: opinion of the Advocate General Mischo, delivered on 18 May 2000, Case C-283/98 P, *Mo och Domsjö AB vs Commission of the European Communities*, and the case law referred to therein.

infringement has to be assessed by reference to the actual results which occur on the market or to the harm caused to purchasers of the relevant products.

The Court concluded⁹⁴ that in the present case the Commission was not obliged to examine the concrete effects of the measures on competition within the Common Market, given that it could show that the agreement in question had as its object the prevention, restriction or distortion of competition. In addition to that, the Court stressed that, in any case, the existence of a number of consumer complaints confirmed that the measures had effects on the market.

In conclusion, the Court found that the documents submitted by the Commission proved the existence of measures aiming at foreclosing the Italian market for new cars of the VW and Audi brands and establishing an infringement of Article 81. It pointed in particular to the strong evidence submitted by the Commission, and the systematic character of the infringement.⁹⁵

Delimitation of the relevant market

The Court further confirmed the Commission decision, by holding that the delimitation of the relevant geographical market was not required in this case, and

⁹⁴ Pts. 178, 179.

⁹⁵ Pts. 193, 195, 196.



is generally not required for establishing an infringement of Article 81, and rejected this part of the second ground.⁹⁶ It pointed out that in a case of application of Article 81, this question does not play the same role as in cases of application of Article 82, where a delimitation of the relevant market is necessary. In a case concerning Article 81, the relevant market may be defined in order to determine whether the agreement in question was liable to affect trade between Member States and had as its object or effect the prevention, restriction or distortion of competition within the Common Market. The Commission had found sufficient evidence that Volkswagen had committed such infringement. As the Commission was right in concluding that the measures resulted in the foreclosure of the Italian market, it followed that operations in all other Member States could be affected. Therefore, an explicit delimitation of the relevant market was not necessary in this case.

Reasoning of the decision

Another ground of appeal which referred to insufficient reasoning of the decision, was rejected by the Court, by explicitly pointing to the clear and unambiguous reasoning made in the decision, which has enabled both Volkswagen to identify the

reasoning of the decision for its defence, and the Court to carry out its judicial review.

Furthermore, Volkswagen claimed that the fine imposed was excessive. In this context, it has to be noted that the decision against Volkswagen is the very first decision based on the Commission Guidelines⁹⁷ concerning the setting of fines, which is reviewed by the Court. Volkswagen argued that the Guidelines had been adopted with a view to the current case against Volkswagen, and that the Commission had not explicitly referred to them. In respect to the method explained in these Guidelines, the Court found however that the Commission explained in detail the method applied for calculating the fine. As to the gravity of the infringement, the Court held that the abundant amount of evidence proved the very seriousness of the infringement, as stated in the decision. It is important to underline that the Court confirmed that the arguments of Volkswagen, referring to the lack of fiscal harmonisation of the Single Market for cars, and monetary instabilities, could not justify the non-respect of competition rules or attenuate such infringement, even if such

situation may cause commercial difficulties to undertakings.⁹⁸

As part of the ground pertaining to good administration, Volkswagen had referred to the information policy conducted by the Commission prior to the Decision. The Court held that the Commissioner and his spokesperson had communicated the likely amount of the fine to certain media before the formal adoption of the Decision on 28 January 1998⁹⁹, and that by this, the Commission infringed the principle of good administration and the presumption of "innocence" in its decision. The Court did not annul however the decision since it was not established by concrete evidence that the Advisory Committee of the Member States or the College of Commissioners would have modified the amount of the fine or the content of the decision should the divulgation of the information concerned not have taken place.

Reduction of the fine

The Court reduced the amount of the fine from € 102 million to € 90 million. It found first that the Commission did not establish with sufficient evidence two of the measures applied by Volkswagen, and that secondly the duration of the infringement (three years) was much shorter than established by the Commission (more than ten

⁹⁶ Pts. 230, 231, 341.

⁹⁷ Commission Guidelines on the method of setting fines imposed pursuant to Article 15 (2) of Regulation No 17 and Article 65 (5) of the ECSC Treaty, OJ C 9, 14.1.98, p.3.

⁹⁸ Pts. 334, 336.

⁹⁹ Pts. 258 to 268.



years). It is important to underline that the Court did however not apply a reduction proportional to the shorter duration of the infringement. Instead, it took into account the particular gravity and the intensity of the measures in setting the fine at € 90 million. Therefore, it could be deducted from the judgement that the Court considered a higher amount for the gravity of the infringement than the one imposed by the Commission.

The Court also concluded that the initial amount fixed by the Commission could not be considered as particularly high, given that it represents a relatively low percentage in respect to Volkswagen's turnover (0.25% of 1997 turnover in the Member States primarily affected by the infringement (Italy, Germany, Austria) and/or 0.5% of EU turnover.

IMPLICATIONS OF THE JUDGEMENT FOR COMPETITION POLICY

The judgement by the Court of First Instance confirms the legitimacy of the active policy of enforcement of the Commission in pursuing infringements of Article 81 in motor vehicle distribution, which hamper the rights of consumers to benefit from the Single Market. This right is also clearly expressed in the current block exemption regulation concerning motor

vehicle distribution.¹⁰⁰ The treatment of other pending cases against other car manufacturers will no doubt take into account the various considerations of this judgement, which clearly held that the measures used by Volkswagen to limit exports to consumers from other Member States are to be considered as restriction of competition by their object and as a very serious infringement of Article 81.

It also confirms that the Commission is rightly entitled to impose fines of important amount for such infringement since the amount of € 90 million was considered appropriate for an infringement of that type lasting three years. This indicates that the Court considers that fines for such infringement should be fixed at a level which has a sufficiently dissuasive effect.

¹⁰⁰ Commission Regulation (EC) No 1475/95, OJ L 145, 29.6.1995, Article 5 (2) d) and Article 6 (1) (7).

The Commission approves the co-operation agreement between General Motors Corporation and Fiat SpA

Alberta LASCHENA and Christophe DUSSART,
DG COMP-F-2

On 16 August 2000, the Commission cleared the co-operation agreement between General Motors and Fiat in the areas of powertrains¹⁰¹, joint-purchase of car components and some other joint activities, such as the organisation of financial services directed to their dealers and consumers, in Europe and Latin America¹⁰².

The Alliance involves General Motors taking a 20% equity stake in Fiat Auto Holdings BV, a new holding that controls Fiat Group's auto and light commercial vehicle operations. In return, Fiat receives approximately 5% of General Motors's common stock. Notwithstanding this financial link, the two car manufacturers will continue to compete worldwide in the design of vehicle components not linked to powertrains as well as in the assembly, distribution, branding, marketing and sale of cars. The Alliance excludes Fiat's Ferrari

and Maserati luxury sports car operations¹⁰³.

The co-operation agreement between the two car manufacturers represents the latest significant episode in the consolidation trend by which car manufacturers seek scale economies and growth in emerging markets. For this reason, the evaluation of the notified agreement also took into account the particular context of the automotive industry, which is close to maturity and is characterised by an increasingly concentrated structure with few large suppliers¹⁰⁴.

¹⁰³ A Carlsberg publication, containing a summary of the agreement, was made in the Official Journal on 20 June 2000, in order to give third interested parties the possibility of submitting their comments on the said operation (OJ C170/8, 20 June 2000).

¹⁰⁴ See, for example, *BMW/Rover* (Commission Decision M.416, 14.3.1994), *Ford/Mazda* (Commission Decision M.741, 24.5.1996), *Toyota/Daihatsu* (Commission Decision M.1326, 6.11.1998), *Daimler-Benz/Chrysler* (M.1204, 22.7.1998), *Renault/Nissan* (Commission Decision M.1519, 12.5.1999), *Ford/Volvo* (Commission Decision M.1452, 26.3.1999) and *GM/Saab*

At the heart of the Alliance, is the creation of a Powertrain joint venture to be located in Turin, Italy, and of a Purchasing joint venture, which is based in Rüsselsheim in Germany. These two joint ventures will have an initial term of 10 years. Each party will contribute to the joint ventures all of its European and Latin American powertrain and purchasing assets. The activity carried out by these two new entities together accounts for an important part of the cost of a new vehicle.

The Powertrain joint venture will, on an exclusive basis, design and produce a broad range of diesel and gasoline engines and transmissions. Both General Motors and Fiat will continue to develop their brand requirements individually.

The Purchasing joint venture will manage, on an exclusive basis, orders for purchases of parts for incorporation into vehicles manufactured by the Parties as well as parts for distribution to the aftermarket.

The Alliance was treated under article 81 of the Treaty since it was considered to fall outside the scope of council regulation 4064/89 as GM and Fiat remain independent companies.

The Powertrain joint venture and the Purchasing joint venture were considered to be two

(Commission Decision M.1847, 28.2.2000).

¹⁰¹ The powertrain of a motor vehicle includes engine, clutch, transmission, universal joints, drive shaft, differential gear, and axle shaft.

¹⁰² See press release n. IP/00/932, *Commission approves co-operation agreement between General Motors and Fiat*.



structural co-operative joint ventures, as they combine part of the existing activities of the parent companies in the area of the production of powertrain and purchases on a long term basis¹⁰⁵. Nevertheless, the joint ventures do not perform, on a lasting basis, all the functions of autonomous economic entities, remaining largely dependent on Fiat and General Motors, and therefore were not considered full function joint ventures within the meaning of Article 3(2) of Council Regulation 4064/89¹⁰⁶. They were therefore treated under Regulation 17/62 within a two-months deadline since they were considered as structural joint ventures¹⁰⁷.

The major effects of the Alliance were registered on the markets for the procurement of parts and supplies for the automotive industry. In this market, General Motors and Fiat, following the conclusion of the agreement, became the first purchaser.

The Alliance also has effects on the markets for the production

and supply of cars and light commercial vehicles (LCVs). These markets are close to maturity, and are characterised by an increasingly concentrated structure with few large suppliers and large symmetric structure. The positions of car manufacturers are not destined to change permanently. Barriers to entry are quite high and entry in the relevant market is not frequent.

The agreement was found to be restrictive of competition within the meaning of article 81 (1) of the Treaty in the mentioned markets. It was considered that a co-operation agreement consisting of the establishment of joint ventures could restrict competition between parent companies to the extent that they are already actual or potential competitors. In the present case, both General Motors and Fiat are in the position to fulfil individually the tasks assigned to the joint ventures and they forfeit their capabilities to do so by the creation of the joint ventures¹⁰⁸. This agreement came under article 81 (1), since it also involved firms with market power and it was likely to cause foreclosure problems vis-à-vis third parties¹⁰⁹.

General Motors and Fiat are direct competitors in the markets for the production of passenger cars and LCVs since they individually produce motor vehicles to be supplied via their national importers to dealers and final consumers. Through the Powertrain joint venture, they co-ordinate their activities in the development and production of powertrains on an exclusive basis. Therefore, the agreement does not aim at unifying their efforts to compete in domains in which at the moment they are not active.

Through the establishment of the Purchasing joint venture, Fiat and General Motors will coordinate on an exclusive basis their respective activities in the market for the purchase of vehicles' components and other supplies. The joint purchasing by General Motors and Fiat of part of their component supply should reinforce their buying power towards their suppliers.

The restriction of competition was considered as appreciably affecting trade between Member States owing to special characteristics of the relevant markets described under point 4. (maturity, barriers to entry, concentrated structure) and because the important position of General Motors and Fiat on the said markets.

It was however considered possible to issue a comfort letter since it appears that the Alliance fulfils the four conditions of Article 81 (3) EC

¹⁰⁵ Note concerning the assessment of co-operative joint venture pursuant to article 85 of the EC Treaty (93/C 43/02 point 3).

¹⁰⁶ Commission notice on the concept of full-function joint ventures under Council Regulation (EEC) 4064/89 on the control of concentration between undertakings (98/C 66/01, point 13 and ss.).

¹⁰⁷ Commission's decision of 23 December 1992.

¹⁰⁸ Note concerning the assessment of co-operative joint venture pursuant to article 85 (now article 81) of the EC Treaty (93/C 43/02).

¹⁰⁹ Draft guidelines on the applicability of article 81 (1) to horizontal cooperation (OJ C 118/14 of 27 April 2000).



Treaty. It seems that the Powertrain joint venture helps to improve the development and the manufacture of powertrains, while allowing each parent company to concentrate its individual efforts in powertrain customisation. Moreover, components and parts account for a considerable share of the cost of a new car and the increase in the two companies' bargaining power could result in substantial savings which would be passed on to the consumer in terms of better safety standards and lower prices.

Competition does not seem to be eliminated in respect of a substantial part of the products in questions since on the relevant markets, General

Motors and Fiat are subject to competition from other car manufacturers, of similar dimension and economic strength.

In the end, what can we learn from the co-operation agreement between General Motors and Fiat?

The two car manufacturers, through the Alliance, aim at achieving standardisation in "low-touch" component and platform areas that do not differentiate cars in consumers' eyes. Each party will continue to differentiate its products in terms of design, performance and brand image. For this reason, General Motors and Fiat will continue to customise their engines individually and will

distinguish vehicle characteristics and components in those areas influencing customers' perception.

While other competitors have decided to merge in order to liberate resources to better compete, General Motors and Fiat have chosen a new and "leaner" solution, which will allow them to co-operate in the "upstream" activities and to focus their individual efforts on more customers oriented activities. The future is likely to see more agreements of this kind between car manufacturers. This possibility is open to the car industry, provided that the conditions set out in article 81(3) are met.

THE COMMISSION'S ASSESSMENT OF THE PARTICIPATION OF BSKYB IN THE PAY-TV OPERATOR IN GERMANY

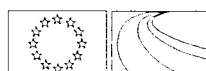
Andrew HOBBS, DG COMP-C-2

On 22 December 1999, British Sky Broadcasting plc ("BSkyB") notified its acquisition of 24% of KirchPayTV GmbH & Co. KGaA ("KirchPayTV"). The notification was judged incomplete and was finally completed on 7 February 2000. During its investigation the

Commission identified a number of competition concerns, which were eliminated by the parties submitting commitments in phase I of the merger control procedure. The Decision of 21 March 2000 bound the parties in relation to pay-TV and digital interactive television services in

Germany and established an arbitration process for the implementation of the commitments.

BSkyB operates pay-TV in the UK, together with interests in digital interactive television and technical services for pay-TV. BSKyB had no German interests, but it is 40% owned by News Corporation, who controls a small German TV channel and the German rights for the UEFA Champions League. Although not a party to the concentration, News acknowledged that it had sufficient influence over BSKyB to be taken into account for the purposes of Article 2, following



the *Kesko Oy v Commission* judgement¹¹⁰.

KirchPayTV operates Germany's only pay-TV service and is wholly owned by the holding company of KirchGruppe. KirchGruppe is also active in the fields of commercial television, trade of broadcasting rights and technical services for pay-TV. It owns BetaResearch, which developed the conditional access system used by KirchPayTV, i.e. it is included in the d-box decoder.

The relevant markets

Three relevant markets were identified: a) *pay-TV*, which has been well established in previous decisions involving Germany¹¹¹; b) *digital interactive television services*, which is an embryonic market in Germany and follows the market identified in the BIB/Open Decision.¹¹² With BSkyB's experience in this field Kirch could move ahead with its stated aim to provide a platform on which others could offer services like shopping, banking, games etc via the TV; and, c) the

acquisition of broadcasting rights, in particular for films and sporting events, which had previously been identified by the Commission.¹¹³ This is a vital neighbouring market for pay-TV, as film and sport content persuade potential subscribers to pay for receiving television services. Although most broadcasting rights are acquired on a national basis, some sports rights with a pan-European interest from the viewers' perspective are acquired for the whole of Europe and re-sold per country. This raised the question of whether there is separate geographic market for pan-European sports rights, but it was not necessary to precisely define the market in this case.

Dominance

Pay-TV

KirchPayTV has a virtual monopoly on the German pay-TV market, although with a loss making business. BSkyB adds a very successful pay-TV company, with experience of digital interactive TV services and deep pockets. The question was therefore whether this strengthened the position of Kirch, by providing it with a badly needed influx of financial resources and know-how. The question of whether BSkyB was being eliminated as a potential competitor in Germany also needed to be examined.

On the first point, it appeared to the Commission that the loss making Kirch pay-TV needed access to development funds, which it had failed to raise on the open market. Without these, given the significant costs involved, there were serious doubts as to its future. BSkyB brought both money and commercial know-how to use it effectively. In the absence of such funds it could be argued that barriers to entry would be lowered as there would be an increasing demand for new digital services and Kirch would no longer be able to buy up all the significant pay-TV rights. This led to serious doubts as the concentration reinforces KirchPayTV's dominant position on the market for pay-TV in Germany.

At first glance BSkyB would seem to be a potential competitor. It was successful in the UK, it had technical know-how, the German market had large potential growth, via News International it had access to Twentieth Century Fox and the German pay-TV rights for the UEFA Champions League, as well as six broadcasting licenses for thematic channels. However, the Commission concluded that neither BSkyB nor any other company is likely to enter the German pay-TV market in the medium term for a number of reasons.

Firstly the more than 30 channels available in the German free TV market reduce the incentive for viewers to subscribe to pay-TV as well.

¹¹⁰ Case T-22/97 *Kesko Oy v Commission*, 15/12/99, paragraphs 137-140.

¹¹¹ See Commission Decision 94/922/EC, *MSG Media Service* (OJ L 364, 31.12.1994, p. 1) and Commission Decision 1999/153/EC, *Bertelsmann/Kirch/Premiere* (OJ L 53, 27.2.1999, p. 1).

¹¹² See Commission Decision 1999/781/EC, *British Interactive Broadcasting/Open* (OJ L 312, 6.12.1999, p. 1), paragraph 11.

¹¹³ See Commission Decision 1999/242/EC, *TPS* (OJ L 90, 2.4.1999, p. 6), paragraph 34.

This effect is demonstrated by the success of pay-TV in the UK and France, compared to its failure to get enough subscribers to break even.

The second point relates to Kirch's control over the decoder infrastructure and technology used in Germany. Almost every decoder in Germany is a d-box and Deutsche Telekom, who has the preponderant share of the cable network market, uses exclusively Kirch's d-box decoders on the pay-TV platform operated by its subsidiary MediaServices Gesellschaft (MSG)¹¹⁴. Any potential entrant would therefore depend on its direct competitor, Kirch, for technical services or develop an alternative platform. Given the situation on the cable network an alternative would have to be satellite based, which would severely limit the potential audience for the service due to restrictions on the use of dishes. In addition the new customers would have to buy or rent the alternative decoder. Experience in the UK has shown the operator has to subsidise the equipment, resulting in an enormous cost to enter what is already a loss making market.

The third barrier was lack of access to content, as Kirch has long term exclusive deals with

all the film studios plus its own extensive library and production facilities. It also owns the pay-TV rights to many leading sports events, thus reducing significantly the rights available to a potential new entrant. Incidentally upon acquiring the UEFA pay-TV rights News offered them to Kirch for four years, which undermines in indications of independent entry.

Finally BSkyB would need considerable financial resources to enter the market at a time when it is investing heavily in the UK with upgrading of its new digital pay-TV service and the rollout of its platform for digital interactive television services. It was, therefore, concluded that BSkyB was not, in the short to medium term, a potential entrant into the German pay-TV market.

Digital interactive television services

The central concern of the Commission in this case was the digital interactive television services market, where no services have been launched but Kirch, Bertelsmann¹¹⁵, the German public service broadcaster ARD, UPC and Primacom had all announced launching plans. There are no indications that BSkyB intended to independently enter this market in the short to medium term.

The costs of developing, installing, promoting and subsidising consumer equipment have been shown by the UK experience to be very high. Such investments require corresponding opportunities for market penetration. No third party was likely to make such an investment as the concentration would have enabled KirchPayTV to enter the market before any other operator. This in turn would have extended the dominance of d-box decoders from the pay-TV market into this market, creating a dominant position.

Without the injection of funding from BSkyB, Kirch would not have the financial resources or developed the necessary know-how to enter this market in the immediate future. BSkyB could supply both the know-how and, uniquely, the experience of running digital interactive television services gained in the running of the BIB/Open joint venture.¹¹⁶ This would foreclose the market to other potential entrants by significantly raising the barriers to entry. By combining the only pay-TV operation with digital interactive services provided through the same box, Kirch could extend its monopoly in pay-TV into this new market. Due to the proprietary nature of the decoder, third parties would have to use a separate box or apply for a license to use the

¹¹⁴ This took place prior to the current sale by Deutsche Telekom of majority stakes in most of its cable networks. In fact the situation has changed little as most purchasers still have to use Kirch decoders.

¹¹⁵ It is reported, that the Bertelsmann group is now developing a service with Deutsche Telekom.

¹¹⁶ In the meantime, BSkyB has acquired a majority stake in the BIB/Open joint venture.

decoder technology. This approach would expose the new entrant to delays and revealing vital information to a competitor to obtain the licence. Nor would a new entrant be able to provide pay-TV. Although Deutsche Telekom had announced that it is selling its cable assets, the structure of the sale was not clear and it appeared that Kirch's decoders would continue to be used as the main service technology. Thus serious doubts with regard to the compatibility of the operation were created in this market.

The acquisition of broadcasting rights, in particular for films and sporting events

By virtue of its dominant position in the pay-TV market, Kirch dominates the upstream broadcasting rights market in Germany and is active as a purchaser of pan-European rights to sporting events. BSkyB also dominates the UK market, with the buyer power from its position in the pay-TV market. News International also controls the German pay-TV and free to air rights for Champions League football, and has bid for some pan-European sports event rights.

Third parties were concerned that Kirch's position gave it the means and incentive to use its power in related markets, to benefit itself or BSkyB, such as tying pay-TV and free TV rights. Yet Kirch was already in a position to do that without the concentration. Nor would joint

resources allow the parties to outbid other bidders. Kirch has no need to offer higher bids for German pay-TV rights as it is the only bidder and has most of them in long term contracts. If Kirch and BSkyB buy together for the UK and Germany the amount they have available to bid for the joint rights would be substantially the same as they had separately. There is no indication that in buying the joint rights they would offer more than they would offer separately for the individual rights.

It was alleged that Kirch could use its power on the German market to strengthen BSkyB's dominant position on the pay-TV market in the UK by making the acquisition of the rights for Germany conditional on BSkyB obtaining the rights for the UK. This did not seem practical as film and sports right are usually licensed on a long term and exclusive basis, making the chances of these contracts ending at a similar time for two or more territories low. Refusal on the part of film studios may result in them developing their own film channels (as Sony and Disney have already started to do in Europe). Finally, the risk for Kirch would seem to be high when the only benefit could have gained was through its 4% shareholding in Sky (which, subsequent to the Decision, it has sold).

The same market raised an issue under Article 2(4), namely whether the parties would

engage in joint buying of pan-European sports events rights. Again this could be engaged in outside the scope of the concentration, motivated by a desire to cut costs. There was no causality between the creation of the JV and any co-ordination of the competitive behaviour by the parents. It was concluded therefore that there were no Article 2(4) aspects in the case.

Interestingly the UK's Competition Commission, examining the similar concentration involving BSkyB and Vivendi (who own Canal Plus, the French pay-TV operator) came to the same conclusions with regard to broadcasting rights.¹¹⁷

¹¹⁷ See the report of the Competition Commission: "In relation to sports rights, we consider that the merger situation is unlikely to result in any significant enhancement of the position of BSkyB, which is already a strong one. The key national rights are unlikely to be affected by collaboration, and there is insufficient reason for us to expect that the merger situation would materially impact on BSkyB's acquisition of rights to international events if joint bidding occurred. Further, there is the prospect that any anti-competitive effects of collaborative bidding could give rise to intervention from the national or EC competition authorities. We do not, therefore, expect that the merger situation would have an adverse effect on the acquisition of sports rights in the UK or on competition between pay-TV operators. For similar reasons, we do not expect the merger situation would have an adverse effect on the acquisition of film rights."

Commitments

Responding to the Commission's serious doubts, the parties offered commitments covering the technological platform for pay-TV and interactive services, which were adopted as part of the Decision. They also offered undertakings on issues relating to broadcasting rights, but these were simply noted, as the broadcasting rights issues did not raise serious doubts.

The technical commitments, and the accompanying arbitration procedure, established a situation where third parties could either access the existing Kirch decoder base or establish their own decoders and require Kirch to provide its pay-TV services. The commitments were developed in co-operation with third parties that had raised specific problems.

The first set was aimed at allowing access to Kirch's technical platform by interested third parties. Kirch agreed to offer technical services on a fair, reasonable and non-discriminatory basis to allow Kirch decoders to receive third party services. Separate accounting is provided for such services. Sufficient information to make full use of the services and to write applications to operate on Kirch's decoder, including provision for independent testing of the application, was also provided for.

Another set of undertakings established Simulcrypt arrangements to ensure the interoperability between service providers using different systems for conditional access, so that third party services can run on Kirch's decoder or vice versa. Kirch undertakes to supply its pay-TV services to third party decoders via Simulcrypt arrangements. In addition, Kirch has to implement the Multimedia Home Platform (MHP), which has been standardised by the Digital Video Broadcasting group. The provision of the MHP will give third parties like ARD and Bertelsmann the possibility to develop digital interactive applications and services that can be run on the decoder that Kirch uses for its pay-TV services.

Where a third party develops its own technical platform and decoders, Kirch licenses its technology and permits the manufacture of decoder boxes combining its decoder technology with other decoder systems.

The technical commitments compensated for the influx of resources and know-how, lowering barriers to entry on the pay-TV market and preventing KirchPayTV from leveraging its dominance on this market into the market for digital interactive television services. By eliminating the serious doubts with regard to a creation or strengthening of a dominant

position the concentration could be cleared.

In the arbitration procedure for the implementation of the commitments, the arbitration rules of the "Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS)" are applied. So far, no case of arbitration has come to the knowledge of the Commission. The arbitration process does not affect the powers of the Commission to take decisions in relation to the commitments in accordance with Article 8 of the Merger Regulation.

The Decision is the subject of an appeal for annulment before the Court of First Instance by ARD.¹¹⁸

¹¹⁸ T-158/00.



MERGERS

Application of Council Regulation 4064/89

Merger Control: main developments between 1st May 2000 and 31st August 2000

Walter TRETTON, Neil MARSHALL and Anna PAPAIOANNOU, DG COMP-B

I. Policy developments and fines

The report to the Council on turnover thresholds and referral procedures: launching the review of the MR ¹¹⁹

This report required by the last amendment to the Merger Regulation covers the period between March 1998, when the revised Regulation came into force, and the end of 1999. The 1997 revision of the Regulation introduced secondary thresholds to avoid multiple filings to national competition authorities. However, it appears, on the basis of the survey carried out so far, that a significant number of operations with cross-border effects continue to fall outside the scope of the Regulation.¹²⁰

This indicates that some of the main aims of the Regulation have not yet been fully achieved. The aims include the principles of subsidiarity, as enshrined in the one-stop shop, and level playing field. In the light of these principles, the Commission believes that multiple filing cases have a Community interest and that the Commission, in principle should be better placed to deal with such cases. The report recognises the concern of the business community, for which multiple notifications are tantamount to legal uncertainty, increased efforts and costs. At the same time it is also clear that merger control forms an important part of competition policy in many Member States. It therefore believes that following a thorough examination is necessary, involving active participation by all interested parties, before any changes to the current jurisdictional rules could be proposed.

states and 39 in more than three EU states. In comparison, the Commission received a total of 494 notifications between March 1998 and the end of 1999 of which 45 were notified under the new thresholds of art. 1(3) MR.

The 1997 revision also introduced modifications to the mechanisms for referral of cases between the Member States and the Commission (Articles 9 and 22). The report indicates the views of industry and the Member States on the effectiveness of these provisions. In the review, the Commission intends to assess the functioning of these rules, as well as to collect objective information concerning the impact, if any, on the costs that involved firms have to bear in referral cases.

Finally, after ten years of application of the Merger Regulation, it is felt to be appropriate to conduct a forward-looking inventory also of other legal and practical aspects of the Merger Regulation in order to assess whether or not the existing system is well equipped to face the challenges of the foreseeable future. These challenges will include external factors, such as the extension of the Community through the accession of the applicant countries and the continuing "merger boom", as well as internal factors, such as the modernisation of Community anti-trust rules. In the context of the further review, the Commission will have to rely on information provided by companies with experience from merger control proceedings at the Community level as well as the Member States. It encourages the active participation of all interested parties in this important debate about the principles underlying

¹¹⁹ The report was adopted on 28.06.2000.

¹²⁰ Of the total of 4,303 mergers, acquisitions and joint ventures or 'concentrations' that required clearance in the Member States of the European Union during that period, no fewer than 294 cases were notified to two national competition authorities, rather than to the Commission, because they did not meet the turnover thresholds. Another 31 cases were notified in three EU member



the Regulation. The EC Merger Control 10th Anniversary Conference¹²¹ has provided a first opportunity to publicly discuss issues related to the Merger Review.

Notice on a simplified procedure for certain cases

In parallel to launching the merger review, the Commission adopted a Notice, which renders merger procedures more efficient already within the present legislative framework. The Notice is based on the experience gained in the application of Merger Regulation, which has shown that certain categories of concentrations do not normally raise competition concerns.

The Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89¹²² identifies three categories of cases, which would qualify for a short-form decision adopted by the Commission at the end of the usual one month review. The Notice applies to concentrations where:

- two or more undertakings acquire joint control over a joint venture, provided that the joint venture has no, or

negligible, actual or foreseen activities within the EEA territory (turnover of less than 100 million euros and assets less than 100 million euros in the European Economic Area;

- none of the parties are engaged in business activities in the same product and geographical market (horizontal relationships), or in a product market which is upstream or downstream of a product market in which any other party to the concentration is engaged (vertical relationships); and
- two or more of the parties are engaged in business activities in the same product and geographical market or upstream or downstream market, provided that their combined market share is not 15% or more for horizontal and 25% or more for vertical relationships.

The short-form decision will contain information about the parties, the nature of the concentration and economic sectors concerned as well as a statement that the concentration is declared compatible with the common market because it falls within one or more of the categories contained in the Notice, with the applicable category(ies) being explicitly identified. As for all full clearance decisions, the Commission will publish a public version of the decision. There will be no press release,

but clearance will be announced in the Commission's Midday Express.

The simplified procedure can reduce the administrative burden on notifying parties. It will still give the Member States and third parties the same possibilities to comment or intervene as under the ordinary procedure. The Commission may also, if necessary, at any time revert to the ordinary investigative procedures. Application of this simplified procedure started on 1.9.2000.

For the first time Commission imposed fines for failing to supply information under the Merger Regulation: Mitsubishi

The Commission has imposed fines on Mitsubishi Heavy Industries for failing to supply information with regard to a joint venture last year between Kvaerner and Ahlström. This is the first time the Commission has fined a company other than a notifying party in merger proceedings. It is also the first time that a periodic penalty payment has been imposed on an undertaking in such proceedings.

During the investigation into the *Ahlström/Kvaerner* chemical pulping joint venture, Mitsubishi was requested to supply information according to Article 11(5) of the Merger Regulation, which obliges third parties to assist the Commission in merger reviews to determine whether a given deal may create a dominant position. But despite

¹²¹ See special article on this conference in this Competition Policy Newsletter.

¹²² See http://europa.eu.int/comm/competition/mergers/legislation/simplified_procedure/

repeated requests from the Commission, Mitsubishi supplied only incomplete information concerning its activities in the world-wide market for recovery boilers, one of the markets where the Commission had expressed concerns. The Commission considered Mitsubishi's behaviour a very serious infringement of EU law since the information requested was necessary for the proper assessment of the Ahlström/Kvaerner operation.

Under Article 14(1)(c) of the Merger Regulation, the Commission may impose fines between 1,000 and 50,000 euros on undertakings which, intentionally or negligently, supply incorrect information in response to the Commission's request for information or which fail to supply information within the period fixed by a decision pursuant to Article 11. In addition, under Article 15(1) of the Merger Regulation, the Commission may also impose periodic penalty payments of up to 25,000 euros per day of delay calculated from the date when a formal request for information was taken. The Commission decided to impose both types of fines on Mitsubishi. The first fine, 50,000 euros, was for failing to comply with the Commission decision, pursuant to Article 14(1)(c) of the Merger Regulation. The second fine was a periodic penalty payment totalling 900,000 euros.

In adopting this decision, the Commission wanted to stress its determination to enforce the merger control rules in the European Union, which presupposes the supply of correct information by both merging parties and competitors requested to assist it in its task.

II. Relevant Cases

Introductory remark : a record number of cases

The second four-month period of 2000 has seen a very sharp increase of notifications under the Merger Regulation (136 notifications, which is up 46 % on the same period in 1999 and up 43 % on the first four-month period of 2000). Seven phase II proceedings were initiated¹²³ and nine phase II proceedings were closed, seven by decision and two following withdrawal of the notifications. There was also a very high number of clearances in phase I subject to commitments (11 cases).

Decisions following an additional four-month in-depth investigation (Decisions pursuant Art.8 MR)

MCI WorldCom / Sprint

The Commission decided to prohibit the merger between US telecommunications firms MCI WorldCom Inc and Sprint Corp as it would have resulted in the creation of a dominant position in the *market for top-level universal Internet connectivity*. In the course of the review, the companies proposed to divest Sprint's Internet business but this was insufficient to resolve the competition concerns resulting from the merger.¹²⁴

MCI WorldCom is the world's leading provider of Internet connectivity, with Sprint one of its main competitors. An in-depth investigation by the Commission showed that the merger would, through the combination of the merging parties' extensive networks and large customer base, have led to the creation of such a powerful force that both competitors and customers would have been dependent on the new company

¹²³ These were M.1879 – Boeing / Hughes, M.1852 – TimeWarner/EMI, M.1845 – AOL/TimeWarner, M.1963 – IndustriKapital/Perstorp, M.1940 – Framatome/Siemens/COGEMA/JV, M.2060 Bosch-Rexroth, M.1646 – CGD/Partest/BCP/SairGroup/Portugal (later withdrawn)

¹²⁴ The companies informed the Commission of their intention to withdraw their notification of the deal the day before the prohibition was adopted. But the Commission felt compelled to take a formal decision as its review had come to an end and as it can only accept a withdrawal if the deal is no longer legally binding. This was not the case, as the companies had not formally cancelled their merger agreement.

to obtain universal Internet connectivity. This would have allowed the merged company to behave independently of both its competitors and customers.

Following the Commission's objections, the companies offered to divest Sprint's Internet business from Sprint's other activities. However, the Commission's investigation showed that this proposal was insufficient as it would not re-establish, with enough certainty as to its effect, immediate and effective competition in the market for top-level Internet connectivity.

It was vital for the Commission that the divested business would become a strong, viable competitor that would prevent the merged WorldCom/Sprint from dominating Internet backbone. The companies' offer failed to guarantee this because Sprint's Internet business is completely intertwined with its traditional telecoms activities.¹²⁵

The Commission also studied the impact of the merger in the *market for the provision of global telecommunications services to multinational companies* where together with British Telecommunications'

Concert alliance with AT&T the merged entity would appear to control the majority of the market. The Commission could not, however, show the absence of competitive constraints from actual competitors in this market and that customers would not be able to countervail against any parallel behaviour by the two leading players. Therefore, the Commission concluded that a collective dominant position could not be established between the merged entity and the Concert alliance.

Pursuant to the EU-US agreement of 1991 on antitrust co-operation, the Commission has examined the merger in parallel with the US Department of Justice although the two authorities have conducted independent and separate investigations. This co-operation will continue in future cases, especially if and when the two authorities identify common competition concerns that might require a jointly pursued remedial action.

This was the 13th time the Commission had blocked a merger since 1990.

VEBA / VIAG

The merger between the German groups VEBA and VIAG, together with the merger between RWE and VEW, which was investigated at the same time by the Bundeskartellamt, will change the face of the German power industry, especially at the level of the

interconnected grid. In its original form the merger of VEBA and VIAG would have resulted in a dominant duopoly between VEBA/VIAG on one side and RWE/VEW on the other on the market in the supply of electricity from the interconnected grid. After the merger PreussenElektra AG (VEBA) and Bayernwerk AG (VIAG) together with RWE/VEW would have controlled well over 80% of this market.

Numerous structural factors meant that, after the merger as it was initially notified, a significant degree of competition between VEBA/VIAG and RWE could no longer have been expected. There were a number of factors that indicated that parallel behaviour could result. These included the fact that electricity is a totally homogeneous product, which is sold on a transparent market; that the companies had similar cost structures owing to a similarly composed stock of power stations and also held a number of jointly operated large power stations; there were numerous interrelationships between VEBA/VIAG and RWE; expected growth in demand is low, and that the product has a low price elasticity.

Moreover, the duopoly VEBA/VIAG and RWE or RWE/VEW (1) would not have faced any significant competition from outside. In addition to the extremely high

¹²⁵ When assessing the feasibility of the proposed divestiture, the Commission also took into account issues raised by Cable & Wireless after its purchase of Internet MCI which was divested from MCI's other activities to gain clearance of the WorldCom/MCI merger in 1998.



market share of the duopoly, apart from EnBW no other interconnected power company would have been independent of the duopolists. The duopoly would have controlled by far the greatest part of installed generation capacity, almost all free generation potential, and by far the greatest part of the transmission network in Germany. There are also significant barriers to entry to the market, in particular relating to the creation of new capacity and imports.

In response to the Commission's objections VEBA/VIAG proposed that it should dispose of numerous holdings in other companies, and make improvements to the ground rules governing the market in electricity. Similar undertakings have been given to the Bundeskartellamt by RWE/VEW. The commitments given by VEBA/VIAG and RWE/VEW ensure that the main links between the two big groups will be severed, especially as a result of the sale of their holdings in the east German interconnected company Vereinigte Energiewerke AG (VEAG) and the lignite producer LAUBAG. VEAG will thus become independent of the West German interconnected companies, and will have to be taken seriously as a competitor. VEAG will have a market position comparable to that of VIAG before the merger, and will become the third force on the German market, the fourth one being the southern company

Energie Baden-Württemberg (EnBW). The sale of these holdings will at the same time reduce the market positions of VEBA/VIAG and RWE/VEW, to whom VEAG belonged until now.

Other links with RWE/VEW will be cut by selling off shares in VEW held directly and indirectly by VIAG, and shares in Rhenag Rheinische Energie AG held by VEBA. The position of the remaining interconnected companies will be strengthened; either VEBA or VIAG previously had a stake in each of these with the exception of EnBW. This applies to the Hamburg electricity supplier Hamburgische Electricitätswerke AG (HEW) and the Berlin company Kraft und Licht AG (BEWAG).

VEBA/VIAG and RWE/VEW have also undertaken not to charge the transmission fee known as the "T-component", payable where a supplier of energy between the northern and southern trading zones set up by Associations Agreement II (*Verbändevereinbarung II*) cannot net out the quantities they supply against equivalent quantities in the opposite direction. This commitment will considerably improve the ground rules governing transmission through the network operated by these two leading interconnected companies. Imports from Scandinavia will be appreciably simplified, because VEBA will free a portion of the capacity reserved for it in the Denmark

interconnector for use by competitors.

Other commitments have also been given which meet the Commission's objections in respect of two markets in hydrocyanic acid products.

Subsequent to these commitments, the Commission declared the merger compatible with the common market and with the EEA Agreement.

AstraZeneca / Novartis

In this operation, which will lead to the world's leading crop protection business, AstraZeneca, itself created through the merger between Astra AB and Zeneca Group PLC in spring 1999, and Novartis, resulting from the merger between Ciba-Geigy and Sandoz in December 1996, will spin off and merge their activities in the area of crop protection into a newly incorporated company, Syngenta AG to which Novartis will also transfer its seeds business.

The deal posed concerns in a high number of crop protection products, threatening to create or strengthen dominant positions in 39 markets including cereal fungicides and maize herbicides. In many of these markets the parties' combined market shares would have been between 50 % and 75 %. The extensive remedies package consisted of divestitures of products, representing total sales worldwide in excess of €250 million this year, of out-



licensing and the termination of distribution agreements.

Thanks to the bilateral agreement of 1991 on antitrust co-operation between the Commission and the United States of America, the Commission collaborated with the Federal Trade Commission, enabling a common and, hence, effective solution to the problems identified to be found in the markets for cereal fungicides (world-wide divestiture of Novartis' strobilurin business) and maize herbicides (world-wide divestiture of AstraZeneca's acetochlor business).

Dow Chemical / Union Carbide

The acquisition by Dow Chemical of Union Carbide (UCC), creating one of the world's largest producers of plastics and chemicals, posed competition concerns in three areas. The Commission found that without the remedies on which the adopted authorisation decision is conditional, the concentration would have led to the creation or strengthening of dominant positions in the markets for C8 LLDPE resins, ethyleneamines and PE technology.

For C8 LLDPE the operation would have resulted in a combined market share in excess of 80%, or five times larger than that of the nearest competitor. The merger with UCC would have strengthened Dow's

already dominant position on the Western European market through the addition of UCC's share in the Polimeri joint venture with Enichem. To prevent the strengthening of this position, the parties undertook to either cause Polimeri to sell its Italian production plant that produces C8 LLDPE among other products or to divest all off UCC's 50 % ownership interest in Polimeri itself, either undertaking removing the overlap between the parties' activities.

Secondly, the Commission found that specific types of ethyleneamines form separate product markets and that the relevant geographic market is worldwide. For most individual ethyleneamines the operation would have resulted in significant overlaps between the activities of the parties and combined world market shares above 60%.

To remedy these competition concerns, Dow undertook to divest its entire worldwide ethyleneamine business (production plants, intellectual property rights, technology, customer contracts, personnel). It will also make up to half of the capacity at its Terneuzen plant in the Netherlands available to the new owner of the ethyleneamine business. This business can be physically separated from other Dow Chemical businesses and the new owner will not be dependent on Dow for raw materials.

Thirdly, the Commission found that the Dow/UCC deal would have strengthened UCC's dominant position on the market for gas phase PE technology packages and/or on the more general market for low pressure PE technology packages through the addition of Dow's metallocene patent to Univation, UCC's joint venture with Exxon, and would have weakened BP Amoco's position as Univation's most important competitor as it would cease having access to a proven metallocene technology.

To remedy the competition concerns, Dow agreed to offer interested third parties open licences to its background metallocene patents with regard to gas phase and slurry processes. Dow undertook not to grant licences to its background metallocene patents to Univation or to assign such patents to Univation. Dow will also divest all of its assets dedicated to gas phase metallocene PE technology to BP. Together with other measures this will enable BP to offer effective competition to the merged entity on the market for gas phase technology packages, including the possibility to supply metallocene catalysts.

Industri Kapital / Dyno

The acquisition of Norwegian chemicals and explosives company Dyno by venture capital group Industri Kapital¹²⁶

¹²⁶ In cases of acquisitions by venture capital groups, the Commission

was approved following a four-month, in-depth inquiry, subject to the divestiture by Industri Kapital of certain activities in the resins sector and regarding plastic materials handling systems. The operation will lead to the creation of the largest resin producer worldwide with a strong presence in Europe and North America.

The Commission's investigation revealed particular competition problems in two areas: in formaldehyde and formaldehyde based resins in Finland, and in plastic materials handling systems in the Nordic area.

Neste and Dyno both have a formaldehyde and a resin plant in Finland whose main customers are the wood processing industry. The addition of their strong positions would have led to a virtual monopoly for the supply of formaldehyde in Finland and to the creation of the largest resin producer in Finland by far. Furthermore, the operation would have created a link between Arca and Polimoon, which are both active in plastic materials handling systems. Arca is by far the strongest operator in the Nordic area and Polimoon is the only substantial competitor to Arca in the Nordic Area.

In order to remove the competition concerns arising on these markets, Industri Kapital

has proposed to divest the formaldehyde and resin plant of Dyno in Kitee, Finland. In the event that this transaction does not take place within the time period foreseen, Industri Kapital will divest the formaldehyde and resin plant of Neste in Hamina, Finland. Either divestment will remove the competition concerns identified in the field of formaldehyde and formaldehyde based resins. Formaldehyde and resin customers in Finland will continue to have a choice between suppliers.

Industri Kapital also pledged to sell Dyno's shares in Polimoon to an independent purchaser or, alternatively, to divest its complete holding in Arca. Both undertakings will remove the link between Industri Kapital (Arca) and Polimoon in the field of materials handling systems.

By accepting alternative undertakings the Commission has taken a novel approach. Alternative divestiture undertakings facilitate the divestiture process and increase the chances of finding a buyer for a business to be divested.¹²⁷

¹²⁷ The Commission is still investigating the subsequent acquisition of the Swedish chemicals and flooring company Perstorp by Industri Kapital. In this case the Commission found serious competition concerns in a number of chemicals markets and started an in depth investigation on 30 June 2000.

takes account of all other portfolio companies controlled by the group in its competition analysis.

Alcoa / Reynolds

See article by Dimitri GIOTAKOS in Competition Policy Newsletter 2/2000.

Pirelli / BICC

The Commission cleared the acquisition by Pirelli Cavi e Sistemi, the cable division of Italian Pirelli Group, of BICC General's power cable production plants in Italy and in Britain. BICC General will retain its plants in Spain and Portugal. The markets concerned by the operation are the production and sale of power cables to energy utilities. The Commission identified separate markets for low and medium voltage power cables, used for the distribution of electricity, and for high and extra-high voltage cables, used for the transmission of power.

The key issue was the definition of the geographical market, more precisely whether competition operates at national or European level. Prior to liberalisation, the electricity market was marked by monopoly suppliers purchasing largely from domestic cable manufacturers. But the gradual liberalisation of electricity markets combined with the European Union's public procurement directives has changed profoundly the relationship between power utilities and cable manufacturers. Therefore, the Commission did not rely just on past market data but took into account the changes which have already



occurred and which can be expected to occur in the foreseeable future.

The investigation revealed that manufacturers in Europe are in a position to supply their cables in different EU-Member States since product harmonisation is very advanced and transport costs are relatively low. Utility companies are equally able to source cables from foreign suppliers. Besides Pirelli/BICC, there are at least four other larger cable manufacturers (Alcatel, ABB, NKT and BICC General's remaining production plants in Spain and Portugal) as well as a number of smaller companies ("fringe players" like Brugg and Sagem), the entry of which could be induced by the strategic allocation of orders. Transmission grid operators buy large quantities and have a strong bargaining position. This means they could place larger parts of their supplies with alternative suppliers if Pirelli/BICC were to apply anti-competitive prices.

The Commission also examined a possible collective dominant position of Pirelli together with Alcatel, the sector's number two player, both for low and medium and high and extra-high voltage power cables, but found no conclusive evidence for conscious parallel behaviour. The companies' market shares are asymmetric, the market is characterised by a low frequency in tenders and by a low degree of price transparency. Furthermore, in the high and extra-high

voltage segment, cable manufacturers have a strong incentive to compete due to the structure of the bidding process, where utilities often award the whole contract value to the lowest bidder. The markets for medium and low voltage power cables also do not lend themselves to conscious parallel behaviour, as there are a number of smaller suppliers (the so-called "fringe firms") who could be used as alternative suppliers if prices were to be increased by the two leading firms. These suppliers could also meet the requirements of regional utilities, which have a more limited purchasing power compared to the national grid operators. For these reasons, the Commission concluded that the concentration would not lead to the creation or strengthening of any dominant position, either single or collective, in respect of the markets for the provision of power cables of low/medium and high/extra-high voltage to the energy utilities.

The case clearly showed that the Commission, where appropriate, takes due account of the emergence of European markets.

Withdrawals in second phase

Two cases in this period underlined the importance of the Commission's investigation in cases where then no final decision is taken following withdrawals of the notification.

SAirGroup / CGD / Partest / Portugália

The deal was abandoned after the Commission had opened an in-depth investigation into the proposed joint control of Portuguese airline Portugália by SAirGroup, Caixa Geral de Depósitos, Partest and Banco Comercial Português. It would have led to the acquisition of joint control of Portugália by the Portuguese State (through CGD and Partest) and by SAirGroup. Given that the Portuguese State already controls other airlines, namely TAP (Portugal's flag carrier) and SATA (a charter airline), the operation would also have created a link between TAP and SATA on the one hand, and Portugália on the other hand. The combination of TAP and Portugália would have led to considerable overlaps in 6 routes, namely Lisbon-Barcelona, Lisbon-Lyon, Lisbon-Oporto, Lisbon-Faro, Oporto Barcelona, and Lisbon-Nice. Similarly, the operation would have led to high overlaps in charter flights from Lisbon between SATA, TAP and PGA. There were therefore serious risks that the proposed transaction could create a dominant position on the markets concerned.

Finally, the operation would also have created a link between SAirGroup and TAP, since it would have created a joint venture between SAirGroup and the Portuguese State (the owner of TAP). This could have affected competition in other

routes where SAirGroup and TAP are competing, especially in the routes between Switzerland and Portugal, and between Belgium and Portugal.

Microsoft / Liberty Media / Telewest

Microsoft notified an operation in February whereby it would have acquired joint control over Telewest, a British broadband cable company, with Liberty Media, a subsidiary of AT&T Corp. The Commission started an in-depth probe into the deal over fears that it would reduce competition in the digital cable industry, in particular regarding the supply of software for digital television set-top boxes in the United Kingdom.

The cable industry in the UK is highly concentrated, the main operators being NTL and Telewest. There are already links between NTL and Microsoft that could give Microsoft influence over the technology decisions of NTL. If Microsoft had acquired joint control over Telewest, it could then have been able to determine the technology decisions of the emerging digital cable industry in the United Kingdom. This could have substantially reduced the technological alternatives available to customers and led to potentially higher prices for households, which are expected to embrace digital TV as the main means to access the Internet and e-commerce.

Digital TV is likely to become the most widespread means for consumers to access entertainment, education, news and e-commerce as well as digital TV programmes. Cable operators will offer consumers a full range of advanced broadband communications services considered vital to the developing Information Society in Europe. In this emerging market, the Commission considers it essential to prevent the creation of bottlenecks in any of the areas of supply.

Following the Commission's statement of objections, expressed in a formal statement in May, Microsoft informed the Commission that while keeping its 23,7% in Telewest, it is breaking all structural links with Liberty Media and giving up any rights which would have given it decisive influence over decisions at Telewest. As a result of this modification, Microsoft relinquished legal control over Telewest and its interest in the company became a minority one.

Conditional clearances after phase I (pursuant Articles 6.1(b) and 6.2)

BASF / American Cyanamid

The acquisition of American Cyanamid, the crop protection subsidiary of American Home Products, will create the third largest crop protection company worldwide. The deal raised serious competition concerns in certain herbicide and fungicide markets, but BASF proposed

undertakings which will guarantee healthy competition and protect consumers' interests.

The transaction concerns the production, distribution and sale of crop protection products. The parties have overlapping activities in herbicides, fungicides, insecticides, soil fumigants and plant growth regulators. For all these products the geographic markets have been regarded as national because the sale of plant protection products is still determined by different national administrative procedures with regard to registrations. In addition, competitors' market shares and prices of competing products differ widely between Member States.

The commitments cover the products' trademarks for commercialisation, access to registration, know-how and supply agreements entered with the licensee for its needs with respect to the supply of the product if so wished by the purchaser.

These undertakings will eliminate the overlap or materially reduce the market shares of the merged entity in each of the markets where competition concerns were identified by the Commission.

Glaxo Wellcome / SmithKline Beecham and Pfizer / Warner-Lambert

Resulting from the merger between Glaxo Wellcome and



SmithKline Beecham, the new company, Glaxo SmithKline, will be the world's biggest pharmaceuticals firm with 7.3% of global sales. The deal raised concerns about creation of a dominant position in several treatment areas, but the parties offered a comprehensive package of commitments. Serious doubts arose in a number of key treatment areas for human pharmaceuticals where the new entity would have achieved very high market shares, up to almost 100%, in three markets: anti-virals, excluding anti-HIV (J5B), topical anti-virals (D6D) and anti-emetics (A4A). Serious doubts arose also in cephalosporins (J1D) in Spain. Moreover, the Commission's investigation showed that the parties' position in the asthma (COPD) treatment area could be further strengthened due to their pipeline compounds. The remedies which eliminated or significantly reduced the overlap created by the proposed operation in these markets consisted of divestments by means of a licensing agreement and outlicensing.

The approval of the merger between US-based pharmaceutical companies Pfizer Inc and Warner-Lambert Inc creating one of the major global pharmaceutical companies with total revenues of US \$ 27.7 billion was also made possible after the companies addressed the Commission's competition concerns in a number of treatment areas. There were three product markets for human

pharmaceuticals where the merged entity, to be called Pfizer Inc, would have achieved very high market shares. Those are anti-Alzheimer products (N7D) in Austria, Belgium, Finland, Greece, Luxembourg, Spain and Sweden; calcium antagonists (C8A) in Austria; and antihelmintics, excluding schistomycides (PIB), in Germany and Austria. For each of these products the parties committed to divesting of assets and outlicensing removing the entire overlap.

European Aeronautic, Space and Defence Company (EADS)

The Commission conditionally authorised the proposed creation of EADS, to which German company DaimlerChrysler AG, France's Lagardère SCA, the French State and the Spanish company Sociedad Estatal de Participaciones Industriales (SEPI) have contributed their activities in the aeronautic, telecommunications, space and defence sectors.

As regards *large commercial aircraft and defence markets* the operation did not appear to raise concerns. On the prime contractor level of large commercial aircraft the conditions of competition remain unchanged as BAe Systems maintains its veto rights vis-à-vis all strategic decisions at the European Airbus consortium and there is no indication that the operation would create a dominant position on the upstream equipment markets. In

defence programme markets the parties will remain subject to the important countervailing buying power of national Ministries of Defence, and in defence export markets competition appears to take place at worldwide level where the parties will remain subject to the competition from larger and especially USA-based defence contractors such as Lockheed-Martin, Raytheon or Boeing.

By contrast, the contribution of CASA's space activities raised competition issues in two *satellite equipment markets*: central tubes, around which satellites are assembled, and antenna reflectors, a component of the antennas used primarily in communication satellites for commercial and military use. Aérospatiale-Matra Lanceurs ("AML"), a subsidiary of Aérospatiale Matra, is the main European producer of these products, with market shares in the order of 70% in certain segments, and there are indications that CASA is the next best alternative to AML. There was, therefore, a risk that the operation would create a dominant position in these two markets. Furthermore, the Commission also identified competition concerns in the supply of *military communication satellites in France*. This is because, in this market, i) competition is restricted to Matra Marconi Space, a subsidiary of Matra and Marconi, and Alcatel Space Industries; ii) Alcatel Space Industries procures central tubes

and antenna reflectors from the parties; and (iii) in view of the consequences of the transaction in central tubes and antenna reflectors, there were risks that Alcatel Space will not be able to competitively source these products any longer. It was therefore feared that the merged entity would be in a position to foreclose the market to Alcatel Space Industries and therefore become the only supplier of the French Ministry of Defence.

In order to remove those competition concerns, the parties offered commitments consisting in the divestment by Aérospatiale-Matra Lanceurs of two packages which will enable their purchaser(s) to independently and viably design, manufacture and sell antenna reflectors and central tubes for satellites. This divestment package included the relevant intellectual property rights, the transfer of employees or, at the purchaser's option, the provision of technical assistance and dedicated tools.

France Telecom / Orange

After the Commission had approved Vodafone Airtouch's acquisition of Germany's Mannesmann in April, subject to the divestment of Orange, so as to remove competition concerns arising from overlaps in the Belgian and United Kingdom markets for mobile telecommunication services France Telecom subsequently agreed to buy Orange. This new transaction gave rise to

horizontal overlaps in the market for mobile telecommunication services in Belgium, where France Telecom is present via its subsidiary Mobistar and Orange also has a joint venture with KPN, called KPN Orange. This overlap would have given France Telecom a combined market share of over 30% on the Belgian mobile phone market. The deal would have led to the absorption of the third mobile operator in Belgium leaving Proximus and Mobistar as the only two competitors on the market. To prevent the creation of a duopoly on the Belgian market, France Telecom/Orange offered to divest their interest in the KPN Orange joint venture to an independent third party.

Vodafone / Vivendi / Canal+ : Vizzavi Internet portal joint venture

Regulatory clearance for the creation of the Vizzavi Internet portal joint venture between Vodafone, Vivendi and Canal+ was made possible after the companies submitted commitments to ensure rival Internet portals would have equal access to the parent companies' set top boxes and mobile handsets.

The Commission's investigation concluded that the joint venture would have led to competitive concerns in the developing national markets for TV-based internet portals and developing national and pan-European markets for mobile phone based internet portals. In order to address these competitive

concerns identified by the Commission, the parties provided undertakings to ensure that the default portal could be changed, should the consumer so wish. The undertakings will allow consumers to access third party portals, to change the default portal themselves, or to authorise a third party portal operator to change the default setting for them.

The decision ensures that the current competitive model of internet services where consumers can choose their content provider independently of their access provider is carried over into the developing markets of Internet provision via mobile phones and televisions.

Siemens / Dematic / VDO / Sachs

This case which received conditional clearance in phase I is to be seen in the context of case Bosch / Rexroth, in which the Commission initiated in-depth Phase II proceedings on 29.08.2000. It will be discussed together with Bosch / Rexroth a subsequent issue of the Competition Policy Newsletter.

Metsä-Serla / Modo Paper and SCA Packaging / Metsä Corrugated

The proposed acquisition by Finnish-based company Metsä-Serla Corp. of sole control of Swedish-based company Modo Paper AB raised concerns about the reduction of the number of paper merchants in Sweden to

only two major players as a result of the merger (the other one, Papyrus Merchants, being owned by Stora / Enso), but Metsä-Serla offered to sell its business Grafiskt Papper, thus re-establishing a healthy competitive environment.

The operation by which the Swedish based company SCA Packaging, a wholly owned subsidiary of Svenska Cellulosa AB, acquired sole control of Metsä Corrugated currently part of the Finnish group Metsä Serla gave rise to competition concerns in Denmark where the new combined company would have had a very high market share for corrugated boxes. In order to solve these doubts, SCA modified the original concentration by undertaking to dispose of the Neopak business (ex Metsä) and two box making operations (ex SCA Packaging) to a viable competitor. The Commission accordingly declared the operation compatible with the common market and the EEA Agreement.

Preussag / Thomson

The acquisition by German company Preussag AG of UK travel company Thomson Travel Group Plc raised serious concerns about the creation of a collective dominant position in the UK market for short-haul foreign package holidays. Preussag is a conglomerate with strong interests in the travel sector through its ownership of German travel company TUI and its joint control, together with

WestLB and the Carlson group, of UK travel company Thomas Cook Holdings Ltd. The UK market is characterised by a significant degree of vertical integration. The main domestic operators, including Thomson and Thomas Cook, are active in tour operating, travel agencies and charter airline services, and have extensive commercial links with each other. Preussag committed itself to divest its interest in Thomas Cook. German bank Westdeutsche Landesbank (WestLB), which has links with Preussag, will also sell its stake in Thomas Cook. These undertakings also maintain competition in Ireland.

The Commission's decision to clear the operation subject to the sale of Thomas Cook is consistent with its prohibition, last year, of the proposed acquisition by UK travel operator Airtours of domestic rival First Choice on the grounds that it would have left only three big travel operators in the UK market, the merged entity plus Thomson Travel and Thomas Cook.

Rexam / American National Can

The proposed acquisition of beverage can producer American National Can by UK-based Rexam Plc, a consumer packaging group raised some concerns as to the creation of dominant positions in two regional geographic markets, namely in Northern and in Southern Europe. Before the

merger, there were four major beverage cans producers in the EU: Rexam, American Can, Continental Can and Carnaud MetalBox.

In Northern Europe, the merger would have created a duopoly between Rexam/ANC and Continental Can, which together would have accounted for 80% of the market, with symmetrical market shares, cost structures, capacity and excess capacity. Anti-competitive co-ordinated behaviour would then have become possible in this market which is characterised by a flat growth trend, product homogeneity and transparency, the lack of technological change and a capacity-constrained third supplier.

In order to remedy these concerns, the merging parties have proposed to divest two of their plants serving the Northern European market to an independent third party. As a result, the symmetry in capacity and in excess capacity will be eliminated and parallel behaviour through tacit co-ordination between the two leading suppliers will not be sustainable in the long run.

In Southern Europe, where the merged entity would have become the dominant supplier, the companies have also proposed to divest one plant. This undertaking eliminated the competitive overlap and restored the situation prevailing before the merger in this geographic area.



Sara Lee / Courtaulds

The Commission conditionally approved the acquisition of Courtaulds Textiles Plc by Sara Lee. The deal would have created competition concerns in the hosiery market in France, where the companies own the two largest brands, Dim and Well, giving them a combined market share in value terms nearly nine times larger than its closest competitor (Le Bourget). Sara Lee's commitment to divest Textiles Well SA, i.e. the Well brand and the associated manufacturing site of Le Vigan in France, removed this concern, and the merger was allowed to proceed on this basis

Nabisco / United Biscuits

This was the second time this year the Commission has had to rule on a take-over bid involving UB. It was a collective bid involving Finalrealm, the acquiring vehicle formed by Nabisco, US investment company Hicks, Muse, Tate and Furst (HMTF), venture capital firms Cinven and PAI and a subsidiary of Deutsche Bank.

The deal posed competition problems because of the addition of The Horizon Biscuit Company Ltd, another biscuit maker owned by HMTF. In the UK, the largest of the affected markets, the combination of UB and Horizon would have created concerns as regards both producer-branded and retailer-branded biscuits. These concerns were resolved when the deal was

modified so as to exclude Horizon from the operation via the sale of HMTF's minority shareholding in Finalrealm to the other financial investors involved in the deal.

The Commission carried out its investigation in close liaison with the UK competition authorities.

Volvo / Renault Vehicules Industriels¹²⁸

With regard to the acquisition by Volvo of Renault Vehicules Industriels ("RVI") one main concern was that following the prohibition of the proposed merger between Volvo and Scania, Volvo has remained a significant shareholder in Scania. Similarly, RVI has, through the Irisbus joint venture, been linked to Iveco (of the Fiat group) in the production and sales of buses. However, in the context of the RVI acquisition, the parties have committed to remove these links to Scania and Iveco within a specific timeframe. In addition, the parties have also undertaken to eliminate the overlap in bus

activities in France created by the operation.

In Finland, Volvo would have reached a combined market share of 55% for heavy trucks. However, RVI is primarily active through an extensive co-operation with Oy Sisu AB ("Sisu"), a national truck producer with which it established a joint venture company RS Hansa Auto OY ("Hansa"). Following a commitment, RVI's share of Hansa will be sold within a specific timeframe. This undertaking solves the competition concerns on the Finnish market for heavy trucks. The merged entity will remain subject to effective competition from several well-established competitors in all other markets.¹²⁹

Article 9 referral

Interbrew/Bass

Between May and August, the Commission referred one case to a Member State under the Article 9 procedures. This was the referral of the proposed acquisition by the Belgian company Interbrew SA of the brewing and distribution assets

¹²⁸ This decision, although taken on 1.9.2000 (one day after the end of the review period covered in this article), is nevertheless included here as it is to be viewed in the context of the prohibition decision in Case No. COMP/M.1672 Volvo/Scania of 15.03.2000. (Decision published on the Internet. See Dan Sjöblom's article in Competition Policy Newsletter 2/2000.)

¹²⁹ For example, in France, RVI has been losing market share since 1994. The main beneficiary of this has been DAF, which has tripled its market share in that period. At present all the other European truck producers are present in France and achieve substantial sales ranging from 6 to 16%.



currently owned by the British company Bass. Earlier in the year, Interbrew had acquired Whitbread's brewing assets, and at the time the decision to refer the case was taken, the UK authorities' investigation into this acquisition was still underway. Both Interbrew and Bass are therefore active in the supply of beer in the UK.

In its request for the case to be referred, the UK identified a number of markets within the UK for the supply of beer in which the conditions for referral were met. They considered that these markets were no larger than national, and that the combined strength of Interbrew

and Scottish and Newcastle could give rise to the risk of a harmful duopolistic outcome. After undertaking its own investigation, the Commission agreed with the UK's analysis.

Two further facts led the Commission to exercise its discretion to refer the case to the UK. Firstly, the UK authorities were already investigating Interbrew's acquisition of Whitbread's brewing interests. Secondly, the UK authorities have the benefit of a number of recent investigations into the UK beer industry, the most recent of which is the OFT's review of the Beer Orders. The Commission therefore considered that the UK

is best-placed to carry out the necessary further examination of the case. The UK now has until January 2001 to conclude its investigation.

The referral to the UK authorities only related to those parts of the deal which affected the UK beer sector. Separately, the Commission cleared those parts of the deal which relate to the supply of beer outside the UK, and to the supply of Flavoured Alcoholic Beverages both in the UK and elsewhere as no competition considerations arose as a result of the merger in those markets.

Main developments between 1st June and 30th September 2000

Madeleine TILMANS, DG COMP-G-01

Prolongation of the Community Framework for State aid in the motor vehicle industry until the end of 2001.

Background

The Commission introduced a Community framework for State aid to the motor vehicle industry in 1989, with the twofold aim of increasing the transparency of aid flows and imposing strict discipline in the granting of such aid in order to reduce distortions of competition in the Community industry to a minimum. Various features of the industry, such as its major significance from an employment, trade and technological development point of view, but also the emergence of overcapacity, made such a framework essential.

Since 1989, successive frameworks have been published. The current framework¹³⁰ came into force on 1 January 1998 for a period of three years. It foresees that, at the end of that period, the Commission should decide whether to extend it, in particular in the light of the experience with the application of the multisectoral framework.

Aid under the motor vehicle framework

Scope of the framework

The Community framework for State aid to the motor vehicle industry applies to projects, involving the development, manufacture and assembly of "motor vehicles, "engines" and "modules and subsystems" either direct by a manufacturer or, under certain circumstances, by a first-tier component supplier.

All aid which public authorities plan to grant under authorised aid schemes must be notified if either the nominal amount of the total investment costs reaches € 50 million or if the total gross aid of the project amounts to at least € 5 million. All aid granted *ad hoc* outside an approved scheme as well as any rescue and restructuring aid must be notified in advance unless it complies with the thresholds and rules of the Commission notice on the *de minimis* rule for state aid¹³¹ (€ 100000 over 3 years).

The framework does not only apply to projects within the Community. It follows from the Europe Agreements, that the state aid authorities in the CEEC

should apply the framework as well when assessing an aid project in this sector.

Notified aid measures in the motor vehicle sector mainly involve regional aid. From all cases notified under the present framework between 1998 and 2000, 15 projects involved regional aid, whereas one project involved training aid, one involved environmental aid and one involved R&D aid.

Regional aid

The motor vehicle industry may benefit from regional aid to assist new plants and the extension of existing ones in the assisted areas of the Community, thus making a contribution to regional development. However the Commission has to compare the advantages from the standpoint of regional development with any unfavourable consequences for the sector as a whole. The purpose of the comparison is to ensure that other factors affecting the Community, such as respect for fair competition and overcapacity, are also taken into consideration.

Before the Commission can authorise regional aid in favour of a car manufacturer, it has to conduct an analysis, which concentrates on the following issues:

- Necessity of the aid: The aid recipient must clearly prove that it has an economically viable alternative location for its project. The existence of a

¹³⁰ OJ C 279, 15.9.1997, p. 1.

¹³¹ OJ C 68, 6.3.1996



viable alternative defines the "mobility" of the project. If there were no other industrial site, whether new or in existence, capable of receiving the investment in question within the group, the undertaking would be compelled to carry out its project in the sole plant available, even in the absence of aid. In such a case regional aid is not necessary. Therefore, no regional aid may be authorised for a project that is not geographically mobile. In addition, regional aid intended for modernisation and rationalisation, which is generally not mobile, is not authorised in the motor vehicle industry.

- Eligibility of the costs: The Commission determines whether or not costs relating to the mobile aspects of a project are eligible under the regional scheme applicable in the assisted area concerned.
- Proportionality of the aid: To assess whether proposed aid is in proportion to the regional problems it is intended to help resolve, the Commission uses a cost-benefit analysis. A cost-benefit analysis compares the costs which an investor would bear in order to carry out the project in the region in question with those it would bear for an identical project in a different location, which makes it possible to determine the specific handicaps of the assisted region concerned.

The Commission authorises regional aid within the limit of the regional handicaps resulting from the investment in the comparator plant.

- Analysis of the effects on the industry and on competition: The Commission finally studies the effects on competition of every investment project, looking in particular at variations in production capacity at group level on the relevant market. For instance, if capacities are increased, the allowable aid intensity is reduced. In any case, the aid may not exceed the regional ceiling in the assisted region concerned.

Other aid

Rescue and restructuring aid to the car sector is assessed under the guidelines on State aid for rescuing and restructuring firms in difficulty (OJ, C288, 09.10.1999). The Commission usually requires a reduction in installed capacity in proportion to the aid intensity. Rescue and restructuring aid that leads to a capacity increase will be prohibited.

R&D aid will be assessed under the Community framework for state aid for research and development (OJ, C45, 17.02.1996), *aid for environmental protection and energy saving* under the Community guidelines on State aid for environmental protection (OJ C72, 10.03.1994) and *aid to vocational training* under Community framework for

training aid (OJ C343, 11.11.1998). In addition, *investment aid for innovation* may be authorised in duly justified cases, as an incentive to industrial or technological risk taking.

No aid, however, may be granted to companies in the motor vehicle industry for modernisation or rationalisation, as this would present a very high risk of distortion of competition and should normally be financed from the company's own funds. In addition, no new operating aid will be authorised by the Commission, even in assisted areas.

Possible future options

The Commission has been considering different options for assessing state aid in the motor vehicle sector, particularly in the light of the existing multisectoral framework on regional aid or large investment projects.¹³² This framework aims at reducing, for large scale investment projects, the competition distorting effects of regional state aid by lowering the permissible aid ceiling compared with the maximum aid intensity authorised in the region concerned. This extent of the reduction depends on the capital-labour ratio of the project, the degree of competition in the

¹³² Multisectoral framework on regional aid for large investment projects (OJ C 107, 7.4.1998, p. 7).

relevant market and the impact on regional development.

The multisectoral framework was adopted by the Commission with a view to the broader objective of ultimately replacing the various existing sectoral rules on state aid by a single approach to regional state aid, regardless of the sector involved. The multisectoral framework became applicable from 1 September 1998 for an initial trial period of three years and foresees that the Commission, before the end of this period, will carry out a thorough review of the utility and scope of the framework, which will inter alia consider the question of whether it should be renewed, revised or abolished.

The Commission has in particular identified the following possibilities when considering the future state aid rules in the motor vehicle sector:

- (i) ending the specific rules for control of aid to the industry, while adapting the multisectoral framework as appropriate (e.g. as regards notification thresholds; aid ceilings);
- (ii) revising/renewing the existing framework for a period to be determined.

Extension of the present framework until 31.12.2001¹³³

In view of the fact that an assessment of the functioning of

the multisectoral framework is not foreseen until the end of its period of validity in August 2001, the Commission considered that an extension of the current motor vehicle framework of one year would be appropriate. The Commission took the view that there was no need to alter profoundly the way in which the Commission scrutinises motor industry state aid cases during this extension period.

At its meeting on 31 May, the Commission accordingly decided to extend the present Community framework for state aid to the motor vehicle industry by a period of one year, subject to a few technical adjustments to bring the framework up to date. At the same meeting, the Commission decided to propose, in the form of an appropriate measure within the meaning of Article 88(1) of the EC Treaty, that the Member States comply with the rules of the framework resulting from the extension. The Commission asked Member states to agree to this proposal.

United Kingdom - The Commission authorizes aid for private investors participating in the creation of the High Technology Fund which is aimed at encourage risk capital investments for early stage enterprises in high technology sectors.

On 12 July, the European Commission authorised the creation by the UK authorities of a fund to encourage risk capital investments in early stage enterprises in high technology sectors. Under the measure, the UK authorities will contribute 20 million pounds sterling (£31 million) to the fund which will also include other investors. The other investors will participate on more favourable terms than the authorities, which brings the measure within the definition of state aid. The fund will then take minority stakes in venture capital funds focussed on early stage high technology companies, on the same terms as other investors. The measure includes several features which, taken together, allowed the Commission to decide that the measure would not unduly distort competition. In particular, the UK took steps which should ensure that the aid and the distortion of competition are the minimum necessary to achieve the objective.

Following an analysis of why institutional investors were not making investments in this type of fund, the UK launched an open call for tender for the selection of a fund manager. The

¹³³ OJ C 258/6, 09.09.2000

fund manager, who will operate independently, will have an important incentive to optimise the performance of the fund. Because the UK High Technology Fund's investments in individual funds will be on identical terms to those of other investors, they can be held to respect the "market economy investor principle". The investment decisions of these funds will be taken on commercial terms and can also be held to respect the principle. The Commission normally considers that such investments do not represent state aid to the recipient of the funds.

Nouvelles Décisions sur les cartes des aides à finalité régionale pour la période 2000-2006.

Le processus d'examen et d'approbation des "cartes" notifiées par les Etats membres pour l'octroi d'aides à finalité régionale s'est terminé en septembre par l'adoption de la carte pour la Belgique et une décision positive en ce qui concerne les aspects de la "carte" italienne qui avaient fait l'objet d'une procédure au titre de l'article 88 § 2 du traité CE. Au cours des quatre derniers mois, la Commission a approuvé les projets de cartes qui lui avaient été soumis par la Belgique, le Luxembourg, les Pays-Bas et le Royaume-Uni. Quant à l'Italie et au Portugal, leurs cartes respectives sont désormais

entièrement approuvées par la Commission qui avait déjà précédemment donné son accord en ce qui concerne les zones relatives à la dérogation prévue à l'article 87 § 3 a) du traité CE.

Belgique, Luxembourg et Pays-Bas

On 12 July, 19 July and 20 September, the Commission approved the regional aid map for the period 2000-2006 for Luxembourg and for Belgium respectively. These maps determine the regions eligible for aid under the derogation foreseen under Article 87(3)(c) of the EC Treaty. The Dutch regional aid map covers 15% of the total population of the country. In Luxembourg, 32.0% of the national population is covered, in Belgium 30.9%.

Each of the three map is defined using NUTS V as the basic geographical unit. The Commission accepted the justification for the use of NUTS V provided by the respective national authorities. Moreover, the Commission was satisfied that the population coverage of the regional aid map was inline with its coverage of economic activities and that each of the regions proposed was compact, as required by the regional aid guidelines¹³⁴.

The average regional aid intensity ceiling established in the three nw aid maps is lower than the average ceiling

applicable prior to 1 January 2000 in each of the three Member States. In Luxembourg, the aid intensity ceiling for large enterprises is reduced to 10% nge. In the Netherlands and Belgium the average aid intensity for large enterprises is limited to 16.0% nge and 15.6% nge respectively.

Par ailleurs, en ce qui concerne le Luxembourg, le 19 juillet, la Commission a également autorisé la mise en application du régime d'aides régionales à l'investissement projeté par les autorités luxembourgeoises après avoir conclu qu'il s'inscrivait dans les limites de la "carte" qu'elle avait approuvée et qu'il respectait les prescriptions des lignes directrices pour les aides à finalité régionale.

Portugal

En décembre 1999, la Commission avait décidé d'ouvrir la procédure prévue à l'article 88 § 2 du traité CE à l'égard de la proposition qui lui avait été soumise par les autorités portugaises en ce qui concerne la région NUTS II «Lisboa e Vale do Tejo», qui est une «région 87 § 3 a) sortante» et qui devient éligible au bénéfice de l'article 87 § 3 c). Le point 5.7 des lignes directrices concernant les aides d'Etat à finalité régionale prévoit pour les zones perdant leur statut de "zone 87 § 3 a)", la possibilité d'autoriser une période transitoire de 4 ans maximum pour l'adaptation des intensités d'aides maximales dont elles

¹³⁴ OJ C 74, 10.03.1998, p. 9.

avaient bénéficié jusqu'au 31.12.1999, une certaine limitation de la couverture territoriale devant cependant être respectée. Or, la notification portugaise proposait de faire bénéficier de ladite période de transition l'entièreté de cette région alors qu'elle représente 33,4% de la population nationale, de ladite. Cela ne pouvait pas être justifié au regard des lignes directrices et était donc incompatible avec le marché commun.

Dans le cadre de la procédure formelle d'examen, les autorités portugaises ont procédé à une modification de leur notification originale, ce qui a permis à la Commission d'approuver, le 28 juin dernier, cette partie de la carte portugaise. En particulier, selon leur nouvelle proposition, seules les quatre régions de niveau III de la NUTS «Lezíria do Tejo», «Médio Tejo», «Oeste» et «Península de Setúbal», qui représentent 14,9% de la population nationale et dont le PIB par habitant se situe entre 55% et 58% de la moyenne communautaire, bénéficieront de la période de transition susmentionnée. En revanche, la région «Grande Lisbonne» (18,5% de la population) en est exclue.

Puisque la Commission avait déjà décidé, en décembre 1999, que toutes les autres régions portugaises étaient admissibles au titre de l'article 87 § 3 a) du Traité, les deux décisions forment ensemble la carte des

aides régionales applicable au Portugal.

Royaume-Uni

Le 26 juillet, la Commission a décidé d'approuver la "carte" des aides à finalité régionale que le Royaume-Uni lui avait notifiée en mai dernier pour la période 2000-2006. En application de celle-ci, 28,7 % de la population de la Grande-Bretagne et la totalité de celle d'Irlande du Nord vivent dans des régions éligibles au bénéfice d'aides à finalité régionale. Les taux d'aides autorisés vont de 10 à 35 % en équivalent-subvention net, à l'exception de l'Irlande du Nord où ils peuvent atteindre 40 %.

Italy - The Commission decides to authorize an investment aid to the firm "Villa Romana s.r.l." for the building of a hotel complex near Pompei.

"Villa Romana" is a hotel facilities project. The aid was notified in the context of the "*contratto d'area* [territorial contract] *Torrese-Stabiese*" (Campania)¹³⁵, under the conditions laid down in the Multisectoral Framework for

large investment projects in assisted areas. It consists of investment aid granted in the form of a non-reimbursable grant amounting to 38,39 million Euros, to be disbursed over 3 years. The aid intensity, as calculated according to the four factors laid down in the Multisectoral Framework, is 56,67% NGE, which had to be lowered to the regional ceiling for Campania which - for an SME such as "Villa Romana s.r.l." - is 50,38% NGE.

The hotel complex will be built near the archaeological site of Pompei-Ercolano and have a capacity of 838 beds (438 rooms). The project will create around 480 new jobs, both directly (219) and indirectly (262).

On the basis of the evidence supplied by the Italian authorities, the Commission decided to consider the provinces of Naples and Salerno as the relevant geographic market.

The relevant product market is "Hotels and motels, with restaurant" (NACE Code 55.11). The project aims at filling the existing gap in the supply of "4-stars +" hotel category in the interested area. The hotel looks significant by its size, but it would just allow to intercept 62% of the excess demand in the relevant geographic market.

Over the years from 1994 to 1997, Campania witnessed a steady increase in the presence

¹³⁵ The latter is based on the protocol of agreement concluded between the employers' organisation and the trade unions.

of both foreign tourists (+10,18% on average) and domestic (+2,98%) visitors. This trend is likely to continue or even accelerate in the years 1999-2000. Moreover, there is a situation of permanent traffic congestion between Pompei and the Penisola Sorrentina – which prevents a 100% substitutability between adjacent hotel clusters. On the other hand, the supply of bedrooms of a comfort level in the area is extremely limited.

Therefore, the new 4-stars hotel is not likely to affect the intra-EU exchanges to an extent which is incompatible with the competition conditions in the internal market, as its impact is likely to be limited to the local tourist basin, which has at its core the archaëlogical site of Pompei-Ercolano, the Vesuvian area and the Penisola Sorrentina. The Commission has accordingly decided to raise no objections to the aid in question.

Sweden - Commission approves State aid to improve the indoor environment in buildings for reasons of public health

On 12 July 2000 the Commission decided to close the Article 88(2) procedure with a positive decision in respect of an aid scheme intended to reduce the presence of allergenic substances or other materials that constitute health hazards in buildings.

The measure is an amendment to an environmental investment aid scheme that runs until the end of 2001. The new aid may for example be granted for the conversion of insufficient ventilation systems or elimination of excessive humidity or mould and radon. Conversions that do not have health or environmental effects, such as changing the plan of the building are not eligible for aid, nor are measures carried out due to legal requirements (unless they go further than required). About SEK 50 million (about 6 million Euro) are expected to be used for the new grants.

The Commission initially had doubts with regard to the Community objective on the basis of which to accept the aid. It therefore opened the procedure under Article 88(2) of the EC Treaty. The investigation led to the conclusion that the Community guidelines on State aid for environmental protection, on which the original approval of the scheme was based, could not be applied on this measure. As the scheme will contribute to improving public health in general, including the health and safety of workers, the Commission closed the procedure with a positive decision based on the provisions of the Treaty on the health and safety of workers as well as public health and environmental protection in general (Articles 137, 152 and 174 of the EC Treaty, respectively), which are recognised Community objectives.

Portugal - La Commission ouvre la procédure au titre de l'article 88 § 2 du traité CE à l'égard du régime d'aides financières et fiscales existant dans la zone franche de Madère étant donné que les mesures utiles destinées à le rendre compatible avec les réglementations communautaires n'ont toujours pas été mises en application par les autorités portugaises.

La Commission a autorisé en 1987, pour une période initiale de trois ans, un régime d'aides financières et fiscales dans la zone franche de Madère. Une prolongation de ce régime pour des périodes additionnelles de respectivement trois et cinq ans a ensuite été autorisée par la Commission à deux reprises. Selon la dernière décision de la Commission y relative, des aides au fonctionnement pourraient être accordées aux entreprises industrielles, financières et de services qui s'installeraient dans la zone franche jusqu'au 31.12.2000. En particulier, ces entreprises pourraient bénéficier d'une exonération totale d'impôts directs jusqu'à fin 2011, date à partir de laquelle cette exonération deviendrait partielle.

Entre-temps, suite à l'adoption des lignes directrices concernant les aides d'Etat à finalité régionale, la Commission a proposé à tous les Etats membres de modifier les régimes d'aides à finalité régionale existants qui seraient encore en vigueur le 1er janvier 2000 afin de les rendre

compatibles avec les dispositions des lignes directrices à partir de cette date. Or, ces lignes directrices consacrent le principe de l'interdiction des aides au fonctionnement, tout en admettant des exceptions dans les régions bénéficiant de la dérogation prévue à l'article 87 § 3 a) du Traité, à condition qu'elles soient justifiées en fonction de leur contribution au développement régional et que leur niveau soit proportionnel aux handicaps qu'elles visent à pallier. En outre, ces aides au fonctionnement doivent être limitées dans le temps et dégressives.

Bien qu'elles aient accepté les mesures utiles qui leur ont été proposées par la Commission, les autorités portugaises n'ont toujours pas apporté au régime en cause toutes les modifications nécessaires pour le rendre compatible avec les lignes directrices concernant les aides d'Etat à finalité régionale. Par conséquent, la Commission a décidé d'ouvrir la procédure d'examen prévue à l'article 88§2 du Traité à son encontre.

United Kingdom - Commission investigates aid involved in the Viridian Growth Fund, a venture capital fund located in Northern Ireland.

On 26 July, the Commission decided to open the Article 88(2) EC procedure regarding aid involved in a new venture capital

fund in Northern Ireland called the Viridian Growth Fund. The enquiry will enable the Commission to determine whether the aid is compatible with the common market.

The UK authorities had notified to the Commission an aid scheme linked to the setting up and operations of the Viridian Growth Fund LP in September 1999. Additional information was supplied in January, March and June 2000.

The Fund will have capital in a total of £10 million. The purpose of the £ 10 million Fund is to address perceived gaps in the provision of venture capital to small and medium-sized enterprises in Northern Ireland. Partners in the Fund are the Department of Enterprise Trade & Investment (DETI - £ 3.34 million), the European Investment Bank (£ 3.33 million), the electricity supplier Viridian Group Plc (£ 2 million) and a number of pension funds (£ 1.33 million).

There are important differences in the terms of investment between DETI and the other investors. Finance is gradually drawn down into the fund over a period of five years. In the first part of this period finance is mainly provided by the DETI, thereafter, with the public sector commitment fully invested, the remaining drawdowns come from the other investors. Monies will be initially returned to the private investors, until they have realised a full return of their

investment plus a return of 10% a year. It is only thereafter that any further realisations from the portfolio will be made to the public sector.

At this stage the Commission considers that the proposed scheme involves aid to the private investors of the Fund and to the recipient SMEs that falls under Article 87(1) EC and Article 61(1) of the EEA Agreement in so far as it may distort competition and affect trade between Member States. The Commission is also considering whether the limited partnership, which is the vehicle for the Fund's operation, should also be considered to be an undertaking which is a beneficiary of the aid.

The Commission has assessed whether one of the exemptions provided for in Article 87 EC can apply to the aid.

It notes, first, that the aid to SMEs involved does not, on the basis of the information at hand, meet the conditions set out in the Community guidelines on State aid for small and medium-sized enterprises (OJ C 213, 23.7.1996, p.4), the Guidelines for national regional aid (OJ C 74, 10.3.1998, p. 9) or in any other of the Commission's communications and frameworks, and may assimilate to so-called operating aid.

Operating aid can only be allowed in regions qualifying for an exemption under Article 87(3)(a) EC, and if the aid is

➤ STATE AID

progressively reduced and limited in time.

These conditions do not seem to be met in this case, as Northern Ireland does not qualify as an exemption under Article 87(3)(a) EC and the aid scheme does not seem to provide for the aid to be progressively reduced.

Second, the different terms for public and private invested

monies in the Fund constitute state aid to the private investors of the Fund, which cannot be found compatible under any of the communications and frameworks which the Commission has adopted, and which can also not be determined to be the minimum necessary to achieve its objective. Furthermore, the scheme may distort competition between venture capital funds.

Because the Commission at this stage nourishes serious doubts as to the compatibility of the scheme with the common market, it is obliged to initiate investigations pursuant to Article 88(2) of the Treaty. Under this procedure all interested parties will have the opportunity to comment. The Commission will thereafter take a final decision.

Séminaire euro-méditerranéen sur le droit et la politique de concurrence à Casablanca (Maroc) les 18 et 19 juillet 2000

Jean-François PONS, Directeur Général adjoint

Le Gouvernement marocain a organisé les 18 et 19 juillet 2000, avec le concours de la CNUCED, un séminaire particulièrement intéressant destiné:

- d'une part à présenter à une assistance marocaine, mais aussi à des représentants d'autres pays de la Méditerranée et d'Europe, la loi marocaine instituant la liberté des prix et la protection de la concurrence, qui entrera en vigueur en 2001 et qui découle notamment des accords euro-méditerranéens;
- d'autre part à débattre des conditions dans lesquelles la concurrence doit trouver sa place dans les pays en développement et face à la mondialisation, en particulier en s'appuyant sur la coopération internationale.

La discussion sur la nouvelle loi marocaine, qui a été présentée par M. Alhami, Ministre des Affaires générales, a été particulièrement riche. Les intervenants ont dans l'ensemble salué les progrès que cette loi apporte à l'économie et aux consommateurs marocains, notamment à travers la création

du Conseil de la Concurrence, qui sera une autorité indépendante. Plusieurs représentants d'entreprises ou de consommateurs ont souhaité que le rôle de ce Conseil (formellement instance consultative) puisse être renforcé dans la pratique, notamment à travers un suivi aussi systématique que possible par le Gouvernement des avis du Conseil. De nombreux participants (y compris d'autorités de concurrence étrangères) ont aussi souhaité que la saisine du Conseil, qui ne peut être effectuée que par l'administration, soit fréquente et que l'administration lui transmette les plaintes que les entreprises et les associations de consommateurs déposeraient auprès d'elles.

Le second thème "concurrence, développement et mondialisation" a été développé dans des discussions où sont notamment intervenus MM. Brusick (CNUCED), Gallot (Ministère français de l'Economie, des Finances et du Budget), Anderson (OMC), Pons (Commission européenne), Heimler (Autorita Garante) et Mme Knoll (Bundeskartellamt)

et M. Kheimany (Banque Mondiale).

Les conclusions de ces discussions peuvent être résumées ainsi:

- il est dans l'intérêt des PVD (et en particulier de leurs consommateurs) d'avoir un droit protégeant la concurrence;
- ce droit peut être adapté à leur situation, notamment couvrir des zones économiques regroupant plusieurs pays et se développer de façon progressive;
- la coopération entre autorités nationales de concurrence doit s'intensifier en bilatéral (y compris par de l'assistance technique vers les PVD), mais aussi en multilatéral via l'OMC.

Accords euro-méditerranéens et concurrence : une réponse aux problèmes de développement et de mondialisation - Casablanca, 18-19 juillet 2000

Jean-François PONS, Directeur Général adjoint

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CONCURRENCE ET DEVELOPPEMENT

1) La politique de concurrence n'est pas faite que pour les pays développés

- Les tendances anticoncurrentielles (ententes, abus de position dominante, tentatives de monopolisation) existent partout.
- Laisser ces tendances sans les combattre aboutirait à pénaliser les consommateurs, les PME, l'innovation, l'économie nationale (y compris l'emploi).
- Les évolutions récentes dans les anciens pays communistes, comme en Asie du sud-est, témoignent qu'une absence de concurrence interne aboutit à une

sclérose économique ou à des crises.

2) La politique de concurrence dans les pays en développement doit être adaptée

- Les priorités doivent être la répression des ententes les plus graves (cartels de prix), répartitions de marché ainsi que les abus de position dominante et éviter les concentrations économiques excessives (notamment au moment des privatisations ou démonopolisations).
- Les secteurs à surveiller sont avant tout ceux liés à l'import/export (ex. cartel transport maritime Afrique de l'Ouest) parce que fort impact pour ces pays, ainsi que celui des biens de consommation, car les consommateurs doivent adhérer et soutenir cette politique ainsi que les PME.
- Exceptions/limites: l'exemple le plus courant est celui des services

publics, mais les exceptions à la concurrence doivent être toujours justifiées et transparentes, y compris sur leur coût.

- Les zones économiques pour un développement harmonieux de la concurrence doivent être d'une certaine taille, ce qui doit inciter à la création de zones regroupant plusieurs pays (dont le Marché commun européen a été l'exemple historique le plus significatif).

CONCURRENCE ET MONDIALISATION

1) La tendance à la mondialisation de nombreux secteurs industriels et de services signifie que les problèmes de concurrence prennent de façon croissante une dimension mondiale.

Les comportements anticoncurrentiels qui prennent place en dehors d'un pays, par exemple un cartel ainsi que les opérations structurelles impliquant des entreprises étrangères (illustrées par la vague actuelle des grandes fusions et des alliances stratégiques mondiales) peuvent avoir un impact important sur la concurrence au sein de ce pays. La mise en oeuvre d'une politique de concurrence efficace dans le monde et la coopération

* Cette présentation a été faite à titre personnel et ne saurait donc engager la Commission européenne.

entre autorités de concurrence sont devenues nécessaires afin de faire face à ces nouveaux défis.

2) **La Commission européenne a pris plusieurs initiatives ces dernières années** pour développer la coopération bilatérale avec ses principaux partenaires commerciaux, tout en présentant des propositions pour une nouvelle approche multilatérale, dans la ligne du rapport Van Miert de 1996. Aujourd'hui, la Commission est engagée dans une coopération bilatérale active avec les autorités de concurrence des Etats-Unis, elle s'implique dans les progrès d'une politique de concurrence dans les pays candidats à l'élargissement de l'union européenne et dans les autres pays voisins et partenaires de l'Europe. Enfin, l'union a proposé le développement des règles de concurrence au sein de l'OMC, visant à faire progresser la politique de concurrence partout dans le monde et la coopération entre autorités de concurrence.

3) **Pour un pays comme le Maroc**, le développement d'une politique de concurrence et la coopération avec d'autres autorités de concurrence permettent de ne pas subir des comportements anticoncurrentiels venant de

l'extérieur, ni des décisions unilatérales d'autres gouvernements. Elles devraient faciliter aussi l'accueil d'investissements étrangers concurrentiels et bénéfiques.

CONCURRENCE ET ACCORDS EURO-MEDITERRANEENS

L'introduction de règles de concurrence dans les accords euro-méditerranéens est une réponse aux questions relatives au développement et à la mondialisation qui viennent d'être évoquées.

1) **Les accords euro-méditerranéens**, signés par l'union européenne avec les autres pays riverains de la Méditerranée, ont pour but de resserrer les liens économiques et politiques, de favoriser les échanges de biens et de services et de soutenir le développement des pays partenaires. L'accord avec le Maroc a été signé le 26 février 1996. Ces accords s'accompagnent d'un effort financier sans précédent de la part de l'union européenne (programmes MEDA) et d'une réduction progressive des barrières au commerce.

2) **Les règles de concurrence figurant dans ces accords**

Les pays signataires s'engagent à appliquer des règles inspirées de celles de l'union européenne:

- Lutte contre les accords anticoncurrentiels entre entreprises et contre l'abus de position dominante;
- Lutte contre les aides publiques qui faussent la concurrence en faveur de certaines entreprises ou production.

Les parties s'engagent à lutter contre ces pratiques dès lors qu'elles sont susceptibles d'affecter les échanges entre la Communauté et le Maroc et qu'elles ne peuvent être exemptées sur la base des critères découlant des articles 81, 86 et 87 du Traité d'Amsterdam/anciens articles 85, 86 et 92 du Traité de Rome.

Le conseil d'association adopte les réglementations nécessaires à la mise en oeuvre de ces articles, qui vont s'appliquer dès le début de 2001.

3) **L'application des règles de concurrence convergentes autour de la Méditerranée**

- Vise à faciliter le développement des échanges et à simplifier la vie des entreprises, et ainsi à permettre le développement des pays du sud dans un marché élargi.
- Va nécessiter une plus grande coopération entre

autorités de concurrence, ce qui présente la meilleure réponse aux risques posés par la mondialisation.

C'est un grand chantier, mais qui devrait se traduire par des bénéfices pour les consommateurs, les entreprises (et particulièrement les PME), l'innovation et finalement la croissance économique et la création d'emplois.

LA POLITIQUE DE CONCURRENCE AU MAROC

L'adoption de la loi n° 06/99 sur la liberté des prix et de la concurrence s'inscrit parfaitement dans le cadre des accords euro-méditerranéens.

Elle s'inspire de principes proches de ceux du Traité de l'union européenne et des règles de concurrence définies dans ces accords. Certains pourraient regretter que l'autorité

indépendante créée par cette loi, le Conseil de la Concurrence :

- ne soit qu'une instance consultative,
- ne puisse être saisie directement par les entreprises ou les consommateurs.

Mais, le plus important à mon sens pour les autorités marocaines en charge de la concurrence, le Gouvernement et le Conseil de la Concurrence, c'est de réussir la mise en œuvre de cette loi et de passer avec succès l'examen de crédibilité qui s'attache à toute nouvelle autorité dans un domaine aussi important. Pour réussir cet examen, il me semble que :

- le Gouvernement devra transmettre systématiquement au Conseil les plaintes qu'il recevra des entreprises et des consommateurs ;
- le Conseil devra rendre des avis forts et publics au Gouvernement, notamment

en recommandant des décisions avec amendes lorsque cela sera nécessaire ;

- le Gouvernement devra s'efforcer de suivre aussi systématiquement que possible les avis du conseil.

Par ailleurs, je rappelle que le Gouvernement doit aussi organiser un système et des règles de contrôle des aides d'Etat, en application des accords euro-méditerranéens, dès lors que ces aides ont un impact sur les échanges entre le Maroc et l'union européenne.

Pour sa part, la Commission européenne est prête à apporter son concours à la mise en œuvre de cette loi (ainsi qu'au contrôle des aides d'Etat) et, dans la limite de ses possibilités, à développer une coopération, que nous espérons fructueuse avec les autorités en charge de la concurrence.

INFORMATION SECTION

COMPETITION DG staff list

Télécopieur central : 295 01 28

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Aides d'Etat I

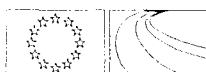
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Documentation...

This section contains details of recent speeches or articles given by Community Officials that may be of interest. Copies of these are available from Competition DG's home page on the World Wide Web. Future issues of the newsletter will contain details of conferences on competition policy which have been brought to our attention. Organisers of conferences that wish to make use of this facility should refer to page 1 for the address of Competition DG's Information Officer.

SPEECHES AND ARTICLES

L'application des règles de concurrence à l'offre de lignes de télécommunications louées dans la Communauté européenne - Jean-François PONS - Audition publique enquête de secteur "lignes louées" - Bruxelles - 22.09.2000

Increasing competition in leased lines - the benefits for Europe's businesses and consumers - Mario MONTI - Telecommunications Sector Inquiry on Leased Lines Public Hearing - Brussels - 22.09.2000

Competition and information technologies - Mario MONTI - "Barriers in Cyberspace" - Kangaroo Group - Brussels - 18.09.2000

The main challenges for a new decade of EC Merger Control - Mario MONTI - EC Merger Control 10th Anniversary Conference - Brussels - 15.09.2000

Competition and Media - Mario MONTI - University of Nijmegen - Nijmegen - 12.09.2000

Cartels Why and How? Why should we be concerned with cartels and collusive behaviour? - Mario MONTI - 3rd Nordic Competition Policy Conference - Stockholm - 11.09.2000

Internet and its effects on competition - Bernardo URRUTIA GARRO - Universidad

Internacional Menendez Pelayo (UIMP) - Barcelona - 10.07.2000

Il programma della Commissione per un'economia europea competitiva e creatrice di occupazione - Mario MONTI - Convegno del CNEL - Roma - 10.07.2000

European Competition Policy for today and tomorrow - Mario MONTI - Conference jointly hosted by the Brookings Institution, the Antitrust Section of the American Bar Association, and the District of Columbia Bar Association - Washington - 26.06.2000

Cooperation between competition authorities - a vision for the future - Mario MONTI - The Japan Foundation Conference - Washington DC - 23.06.2000

Access issues under EU regulation and anti-trust law - The case of telecommunications and Internet markets - Herbert UNGERER - The Japan Foundation Conference - Washington - 23.06.2000

Competition Law Reform - Mario MONTI - CBI Conference on Competition Law Reform - London - 12.06.2000

European Competition Day - Concluding Remarks - Alexander SCHAUB - European Competition Day - Lisbon - 09.06.2000

Concurrence dans les professions libérales : quels avantages pour les consommateurs ? - Maria José BICHO - European Competition Day - Lisbon - 09.06.2000

How does European competition policy contribute to the creation of a single market for car distribution which will benefit consumers - Eric VAN GINDERACHTER - European Competition Day - Lisbon - 09.06.2000

European competition policy and the citizen - Mario MONTI - European Competition Day - Lisbon - 09.06.2000

Competition Day for European Citizens - Alexander SCHAUB - Portuguese DGCC's magazine - Lisbon - 01.06.2000

Competition Policy Reform - Mario MONTI - UNICE Conference on Competition Policy Reform - Brussels - 11.05.2000

COMMUNITY PUBLICATIONS ON COMPETITION

Except if otherwise indicated, these publications are available through the Office for Official Publications of the European Communities or its sales offices (see last page).

Use Catalogue number to order.

A lot of those publications are also available on DG Competition web site:

http://europa.eu.int/comm/competition/index_en.html

LEGISLATION

Competition law in the European Communities-Volume IA-Rules applicable to undertakings

Situation at 30 June 1994; this publication contains the text of all legislative acts relevant to Articles 85, 86 and 90.

Catalogue No: CM-29-93-A01-xx-C (xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT).

Competition law in the European Communities-Addendum to



Volume IA-Rules applicable to undertakings

Situation at 1 March 1995.

Catalogue No: CM-88-95-436-xx-C
(xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT).

Competition law in the European Communities-Volume IIA-Rules applicable to State aid

Situation at 30 June 1998; this publication contains the text of all legislative acts relevant to Articles 42, 77, 90, 92 to 94.

Catalogue No: PD-15-98-875-xx-C
(xx=language code: ES, DA, DE; EL, EN, FR, IT, NL, PT, SV, FI)

Competition law in the EC-Volume II B-Explanation of rules applicable to state aid

Situation at December 1996

Catalogue No: CM-03-97-296-xx-C
(xx=language code= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Competition law in the European Communities-Volume IIIA-Rules in the international field-

Situation at 31 December 1996 (Edition 1997)

Catalogue No: CM-89-95-858-xx-C
(xx= language code: ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Merger control law in the European Union-Situation in March 1998

Catalogue No: CV-15-98-899-xx-C
(xx=language code: ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Brochure concerning the competition rules applicable to undertakings as contained in the EEA agreement and their implementation by the EC Commission and the EFTA surveillance authority.

Catalogue No: CV-77-92-118-EN-C

OFFICIAL DOCUMENTS

Competition policy in Europe and the citizen

Catalogue No: KD-28-00-397-xx-C
(xx=language code: FR, IT, SV et PT; the other versions will be available later).

Application of EC State aid law by the member state courts

Catalogue No: CM-20-99-365-EN-C

Dealing with the Commission (Edition 1997)-Notifications, complaints, inspections and fact-finding, powers under Articles 85 and 86 of the EEC Treaty

Catalogue No: CV-95-96-552-xx-C
(xx= ES, DA, DE, EN, FR, IT, NL, PT, FI,SV)

Green paper on vertical restraints in EC competition policy -COM (96) 721- (Ed. 1997)

Catalogue No: CB-CO-96-742-xx-C
(xx= ES DA DE GR EN FR IT NL PT SV FI)

Final report of the multimodal group - Presented to Commissioner Van Miert by Sir Bryan Carsberg, Chairman of the Group (Ed. 1997).

Catalogue No: CV-11-98-803-EN-C

The institutional framework for the regulation of telecommunications and the application of EC competition rules - Final Report (Forrester Norall & Sutton).

Catalogue No: CM-94-96-590-EN-C

Competition aspects of access pricing-Report to the European Commission

December 1995 (M. Cave, P. Crowther, L. Hancher).

Catalogue No: CM-94-96-582-EN-C

Community Competition Policy in the Telecommunications Sector

(Vol. I: July 1995; Vol. II: March 1997)-volume II B a compendium prepared by DG IV-C-1; it contains Directives under art 90, Decisions under Regulation 17 and under the Merger Regulation as well as relevant Judgements of the Court of Justice.

- Copies available through DG COMP-C-1 (tel. +322-2968623, 2968622, fax +322-2969819).

Brochure explicative sur les modalités d'application du Règlement (CE) No 1475/95 de la Commission concernant certaines catégories d'accords de distribution et de service de vente et d'après vente de véhicules automobiles - Copies available through DG COMP-F-2 (tel. +322-2951880, 2950479, fax. +322-2969800) EN, FR, DE

COMPETITION DECISIONS

Recueil des décisions de la Commission en matière d'aides d'Etat -Article 93, paragraphe 2 (Décisions finales négatives)-1964-1995

Catalogue No: CM-96-96-465-xx-C [xx=FR, NL, DE et IT (1964-1995); EN et DA (73-95); EL (81-95); (ES et PT (86-95); FI et SV (95)]

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-94/98

Catalogue No: CV-90-95-946-xx-C (xx=language code= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.-93/94

Catalogue No: CV-90-95-946-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)



Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.- 90/92

Catalogue No: CV-84-94-387-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.- 89/90

Catalogue No: CV-73-92-772-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.- 86/88

Catalogue No: CM-80-93-290-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.- 81/85

Catalogue No: CM-79-93-792-xx-C (xx=DA, DE, EL, EN, FR, IT, NL.)

Reports of Commission Decisions relating to competition -Articles 85, 86 and 90 of the EC Treaty.- 73/80

Catalogue No: CM-76-92-988-xx-C (xx=DA, DE, EN, FR, IT, NL.)

Recueil des décisions de la Commission en matière de concurrence - Articles 85, 86 et 90 du traité CEE-64/72

Catalogue No: CM-76-92-996-xx-C (xx=DE, FR, IT, NL.)

COMPETITION REPORTS

European Community competition policy 1999

(xx=ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV). Copies available

through Cellule Information DG COMP.

XXVIII Report on Competition Policy 1998

Catalogue No: CV-20-99-785-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

European Community on Competition Policy 1998

Catalogue No: CV-20-99-301-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI SV)

XXVII Report on Competition Policy 1997

Catalogue No: CM-12-98-506-xx-C

European Community on Competition Policy 1997

Catalogue No: Cv-12-98-263-XX-C (xx= FR, ES, EN, DE, NL, IT, PT, SV, DA, FI)

XXVI Report on Competition Policy 1996

Catalogue No: CM-04-97-242-xx-C

European Community Competition Policy 1996

Catalogue No: CM-03-97-967-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT,FI, SV)

XXV Report on Competition Policy 1995

Catalogue No: CM-94-96-429-xx-C

European Community Competition Policy 1995

Catalogue No: CM-94-96-421-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

XXIV Report on competition policy 1994

Catalogue No: CM-90-95-283-xx-C (xx= language code: ES, DA, DE, EL, EN, FR, IT,NL, PT, FI, SV)

XXIIIe Report on competition policy 1993

Catalogue No: CM-82-94-650-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

XXIIe Report on competition policy 1992

Catalogue No: CM-76-93-689-xx-C (xx=ES, DA, DE, EL, EN, FR, IT, NL, PT)

XXIe Report on competition policy 1991

Catalogue No: CM-73-92-247-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT)

Fifth survey on State aid in the European Union in the manufacturing and certain other sectors

Catalogue No: CV-06-97-901-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)

Sixt survey on State aid in the European Union in the manufacturing and certain other sectors

Catalogue No: CV-18-98-704-xx-C

Septième rapport sur les aides d'Etat dans le secteur des produits manufacturés et certains autres secteurs de l'Union européenne [COM (1999) 148 final]

Catalogue No: CB-CO-99-153-xx-C (xx= ES, DA, DE, EL, EN, FR, IT, NL, PT, SV, FI)

OTHER DOCUMENTS and STUDIES

Buyer power and its impact on competition in the food retail distribution sector of the European Union

Cat. No: CV-25-99-649-EN-C



The application of articles 85 & 86 of the EC Treaty by national courts in the Member States
Cat. No: CV-06-97-812-xx-C (xx= FR, DE, EN, NL, IT, ES, PT)

Examination of current and future excess capacity in the European automobile industry - Ed. 1997
Cat. No: CV-06-97-036-EN-C

Video : Fair Competition in Europe-Examination of current
Cat. No: CV-ZV-97-002-xx-V (xx= ES, DA, DE, GR, EN, FR, IT, NL, PT, FI, SV)

Communication de la Commission: Les services d'intérêt général en Europe (Ed. 1996)
Cat. No: CM-98-96-897-xx-C xx= DE, NL, GR, SV

Study of exchange of confidential information agreements and treaties between the US and Member States of EU in areas of securities, criminal, tax and customs (Ed. 1996)
Cat. No: CM-98-96-865-EN-C

Survey of the Member State National Laws governing vertical distribution agreements (Ed. 1996)
Cat. No: CM-95-96-996-EN-C

Services de télécommunication en Europe: statistiques en bref, Commerce, services et transports. 1/1996
Cat. No: CA-NP-96-001-xx-C xx=EN, FR, DE

Report by the group of experts on competition policy in the new trade order [COM(96)284 fin.]
Cat. No: CM-92-95-853-EN-C

New industrial economics and experiences from European

merger control: New lessons about collective dominance ? (Ed. 1995)
Cat. No: CM-89-95-737-EN-C

Proceedings of the European Competition Forum (coédition with J. Wiley) -Ed. 1996
Cat. No: CV-88-95-985-EN-C

Competition Aspects of Interconnection Agreements in the Telecommunications Sector (Ed. 1995)
Cat. No: CM-90-95-801-EN-C

Proceedings of the 2nd EU/Japan Seminar on competition (Ed. 1995)
Cat. No: CV-87-95-321- EN-C.

Bierlieferungsverträge in den neuen EU-Mitgliedstaaten Österreich, Schweden und Finnland - Ed. 1996
Cat. No: CV-01-96-074-DE-C DE

Surveys of the Member States' powers to investigate and sanction violations of national competition laws (Ed. 1995)
Cat. No: CM-90- 95-089-EN-C

Statistiques audiovisuelles: rapport 1995
Cat. No: CA-99-56-948-EN-C

Information exchanges among firms and their impact on competition (Ed. 1995)
Cat. No: CV-89-95-026-EN-C

Impact of EC funded R&D programmes on human resource development and long term competitiveness (Ed. 1995)
Cat. No: CG-NA-15-920-EN-C

Competition policy in the new trade order: strengthening international cooperation and rules (Ed. 1995)
Cat. No: CM-91-95-124-EN-C

Forum consultatif de la comptabilité: subventions publiques (Ed. 1995)
Cat. No: C 184 94 735 FR C

Les investissements dans les industries du charbon et de l'acier de la Communauté: Rapport sur l'enquête 1993 (Ed. 1995)
Cat. No: CM 83 94 2963 A C

Study on the impact of liberalization of inward cross border mail on the provision of the universal postal service and the options for progressive liberalization (Ed. 1995) Final report,
Cat. No: CV-89-95-018-EN-C

Meeting universal service obligations in a competitive telecommunications sector (Ed. 1994)
Cat. No: CV-83-94-757-EN-C

Competition and integration: Community merger control policy (Ed. 1994)
Cat. No: CM-AR-94-057-EN-C

Growth, competitiveness, employment: The challenges and ways forward into the 21st century: White paper (Ed. 1994)
Cat. No: CM 82 94 529 xx C (xx=ES, DA, DE, GR, EN, FR, IT, NL, PT)

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Cat. No: CM-NF-93-0629 A C

The geographical dimension of competition in the European single market (Ed. 1993)
Cat. No: CV-78-93-136-EN-C



International transport by air, 1993

Cat. No: CA-28-96-001-xx-C
xx=EN, FR, DE

Les investissements dans les industries du charbon et de l'acier de la Communauté: Enquête 1992

(Ed. 1993) - 9 languages
Cat. No: CM 76 93 6733 A C

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C 225 2000/C 225E-0027 Written question P-1845/99 by Umberto Bossi to the Commission

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L 195 2000/L 195-0049 Commission Decision of 29 June 2000 relating to a proceeding pursuant to Article 81 of the EC Treaty (Cases IV/36.456/F3 - Intrepreneur and IV/36.492/F3 - Spring) (notified under document number C(2000) 1591)

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C 217 2000/C 217-0035 Notice pursuant to Article 19(3) of Council Regulation No 17 concerning Case COMP/36.841 - Unisource (Review of the Commission Decision of 29.10.1997)

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C 193 2000/C 193-0008 Notice pursuant to Article 5 of Regulation (EEC) No 3975/87 of 14 December 1987 concerning case IV/37.749 - Austrian Airlines Österreichische Luftverkehrs AG and Scandinavian Airlines System

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C 170 2000/C 170E-0136 Written question E-1995/99 by Paul Rübig to the Commission
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C 271 2000/C 271-0007 Prior notification of a concentration (Case COMP/M.2061 - Airbus)

C 271 2000/C 271-0009 Non-opposition to a notified concentration (Case COMP/M.2023 - Brambles/Ermewa/JV)

C 271 2000/C 271-0008 Prior notification of a concentration (Case COMP/M.2162 - Mopla/Deutsche Bank/Trevira) Candidate case for simplified procedure

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C 269 2000/C 269-0007 Non-opposition to a notified concentration (Case COMP/M.1819 - Rheinbraun/OMV/Cokowi (see also ECSC.1320))

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C 267 2000/C 267-0005 Prior notification of a concentration (Case COMP/M.2135 - NCR/4Front) Candidate case for simplified procedure

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C 266 2000/C 266-0014 Non-opposition to a notified concentration (Case COMP/M.1937 - Skandia Life/Diligentia)

15.09.2000

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13.09.2000

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C 262 2000/C 262-0005 Non-opposition to a notified concentration (Case COMP/M.1901 - Cap Gemini/Ernst & Young)

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30.08.2000

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26.08.2000

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25.08.2000

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24.08.2000

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22.08.2000

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19.08.2000

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C 235 2000/C 235-0006 Non-
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C 234 2000/C 234-0003 Prior
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C 234 2000/C 234-0006 Non-
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11.08.2000

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C 229 2000/C 229-0006 Prior
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08.08.2000

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C 225 2000/C 225-0020 Prior
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C 225 2000/C 225-0019 Prior
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05.08.2000

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04.08.2000

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03.08.2000

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C 221 2000/C 221-0005 Prior
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C 221 2000/C 221-0004 Prior
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02.08.2000

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C 220 2000/C 220-0006 Prior
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C 217 2000/C 217-0030 Prior
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19.07.2000

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C 202 2000/C 202-0006 Prior notification of a concentration (Case COMP/M.2029 - Tate & Lyle/Amylum)

14.07.2000

C 201 2000/C 201-0006 Prior notification of a concentration (Case COMP/M.2047 - Bayerische Hypo- und Vereinsbank/IXOS/Mannesmann/memlQ)

13.07.2000

C 198 2000/C 198-0005 Prior notification of a concentration (Case COMP/M.2054 - Secil/Holderbank/Cimpor)
C 198 2000/C 198-0004 Prior notification of a concentration (Case COMP/M.2037 - BNP-Paribas/PHH)
C 198 2000/C 198-0006 Prior notification of a concentration (Case COMP/M.1969 - UTC/Honeywell/i2/MyAircraft.com)
C 198 2000/C 198-0007 Prior notification of a concentration (Case COMP/M.2051 - Nordic Capital/HIAG/Nybron/Bauwerk)
C 198 2000/C 198-0008 Non-opposition to a notified concentration (Case COMP/M.1989 - Winterthur/Colonial)
C 198 2000/C 198-0003 Prior notification of a concentration (Case COMP/M.2067 - ABB/UMOE)

12.07.2000

C 196 2000/C 196-0010 Non-opposition to a notified concentration (Case COMP/M.1898 - TUI Group/GTT Holding)
C 196 2000/C 196-0010 Withdrawal of notification of a concentration (Case COMP/M.1991 - Trelleborg/Icopal)
C 196 2000/C 196-0009 Prior notification of a concentration (Case COMP/M.2044 - Interbrew/Bass)
C 196 2000/C 196-0008 Prior notification of a concentration



- (Case COMP/M.2053 - Telenor/BellSouth/Sonofon)
C 196 2000/C 196-0007 Prior notification of a concentration (Case COMP/M.2062 - Rio Tinto/North)
- 11.07.2000**
C 193 2000/C 193-0011 Prior notification of a concentration (Case COMP/M.2046 - Valeo/Robert Bosch/JV)
C 193 2000/C 193-0010 Prior notification of a concentration (Case COMP/M.2023 - Brambles/Ermewa/JV)
C 193 2000/C 193-0011 Prior notification of a concentration (Case COMP/M.2046 - Valeo/Robert Bosch/JV)
C 193 2000/C 193-0010 Prior notification of a concentration (Case COMP/M.2023 - Brambles/Ermewa/JV)
- 08.07.2000**
C 190 2000/C 190-0013 Prior notification of a concentration (Case COMP/JV.50 - Callahan Invest/Kabel Baden-Württemberg)
C 190 2000/C 190-0015 Non-opposition to a notified concentration (Case COMP/M.1814 - Bayer/Röhm/Makroform)
C 190 2000/C 190-0014 Prior notification of a concentration (Case COMP/M.2036 - Valeo/Labinal)
- 07.07.2000**
C 188 2000/C 188-0005 Prior notification of a concentration (Case COMP/M.1954 - ACS/Sonera/Vivendi/Xfera)
C 188 2000/C 188-0004 Renotification of a previously notified concentration (Case COMP/M.1819/ECSC.1320 - Rheinbraun/OMV/Cokowi)
C 188 2000/C 188-0003 Prior notification of a concentration (Case COMP/M.2025 - GE Capital/BTPS/MEPC)
- C 188** 2000/C 188-0002 Prior notification of a concentration (Case COMP/M.1994 - Andersen Consulting/BT/JV)
- 06.07.2000**
C 187 2000/C 187-0008 Non-opposition to a notified concentration (Case COMP/M.1907 - WOCO/Michelin)
C 187 2000/C 187-0008 Non-opposition to a notified concentration (Case COMP/M.1944 - HSBC/CCF)
- 05.07.2000**
C 186 2000/C 186-0007 Prior notification of a concentration (Case COMP/M.2052 - Industri Kapital/Alfa Laval Holding)
C 186 2000/C 186-0006 Prior notification of a concentration (Case COMP/M.2008 - AOM/Air Liberté/Air Littoral)
- 04.07.2000**
C 185 2000/C 185-0005 Prior notification of a concentration (Case COMP/M.2028 - ABB/Bilfinger/MVV Energie/JV)
- 01.07.2000**
C 184 2000/C 184-0029 Prior notification of a concentration (Case COMP/M.1982 - Telia/Oracle/Drutt)
C 184 2000/C 184-0028 Prior notification of a concentration (Case COMP/M.1884 - Mondy/Frantschach/AssiDomän)
- 30.06.2000**
C 183 2000/C 183-0009 Prior notification of a concentration (Case COMP/M.1805 - Ferrovie dello Stato/Schweizerische Bundesbahnen/JV)
C 183 2000/C 183-0008 Non-opposition to a notified concentration (Case COMP/M.1875 - Reuters/Equant - Project Proton)
C 183 2000/C 183-0008 Non-opposition to a notified concentration (Case COMP/M.1960 - Carrefour/Marinopoulos)
- 29.06.2000**
C 182 2000/C 182-0005 Non-opposition to a notified concentration (Case COMP/M.1870 - ZF/Brembo/DFI)
C 182 2000/C 182-0005 Initiation of proceedings (Case COMP/M.1845 - AOL/Time Warner)
- 28.06.2000**
C 180 2000/C 180-0008 Prior notification of a concentration (Case COMP/M.1993 - Rhodia/Raisio/JV)
C 180 2000/C 180-0010 Prior notification of a concentration (Case COMP/ECSC.1331 - Anglo American/Shell Coal)
C 180 2000/C 180-0011 Prior notification of a concentration (Case COMP/M.2012 - CGNU/Aseval)
C 180 2000/C 180-0009 Prior notification of a concentration (Case COMP/M.1949 - Western Power Distribution/Hyder)
C 180 2000/C 180-0010 Initiation of proceedings (Case COMP/M.1852 - Time Warner/EMI)
- 27.06.2000**
C 177 2000/C 177-0010 Initiation of proceedings (Case COMP/M.1646 - CGD/Partest/BCP/Saigroup/Portugal) Portugal)
C 177 2000/C 177-0009 Prior notification of a concentration (Case COMP/M.2034 - Hagemayer (UK) Limited/WF Electrical plc)
- 24.06.2000**
C 175 2000/C 175-0022 Prior notification of a concentration

(Case COMP/M.1949 - Western Power Distribution/Hyder)
C 175 2000/C 175-0021 Prior notification of a concentration (Case COMP/M.2027 - Deutsche Bank/SAP/JV)

22.06.2000

C 173 2000/C 173-0003 Non-opposition to a notified concentration (Case COMP/M.1847 - GM/SAAB)
C 173 2000/C 173-0003 Non-opposition to a notified concentration (Case COMP/M.1854 - Emerson Electric/Ericsson Energy Systems)

21.06.2000

C 171 2000/C 171-0006 Non-opposition to a notified concentration (Case COMP/M.1799 - BSCH/Banco Totta Y CPP/A. Champalimaud)
C 171 2000/C 171-0006 Non-opposition to a notified concentration (Case COMP/M.1629 - Knorr Bremse/Mannesmann)

20.06.2000

C 170 2000/C 170-0005 Prior notification of a concentration (Case COMP/M.1943 - Telefónica/Endemol)
C 170 2000/C 170E-0131 Written question E-1956/99 by Gerhard Hager to the Commission
 Subject: Amendment of European competition law
C 170 2000/C 170-0007 Non-opposition to a notified concentration (Case COMP/JV.32 - Granaria/Ültje/Intersnack/May Holding)
C 170 2000/C 170-0007 Non-opposition to a notified concentration (Case COMP/M.1885 - Babcock Borsig/VA Technologie/Pipe-Tec)

C 170 2000/C 170-0006 Non-opposition to a notified concentration (Case COMP/M.1846 - Glaxo Wellcome/Smithkline Beecham)

C 170 2000/C 170-0006 Non-opposition to a notified concentration (Case COMP/M.1895 - Ocean Group/Exel (NFC))

C 170 2000/C 170E-0142 Written question P-2070/99 by Concepció Ferrer to the Commission
 Subject: Situation in the European distribution sector following the merger of Promodes and Carrefour

17.06.2000

C 169 2000/C 169-0007 Non-opposition to a notified concentration (Case COMP/M.1908 - Alcatel/Newbridge Networks)

C 169 2000/C 169-0007 Non-opposition to a notified concentration (Case COMP/M.1780 - LVMH/Prada/Fendi)

C 169 2000/C 169-0008 Non-opposition to a notified concentration (Case COMP/M.1959 - Meritor/Arvin)

C 169 2000/C 169-0010 Prior notification of a concentration (Case COMP/M.1925 - Scottish & Newcastle/Groupe Danone)

C 169 2000/C 169-0009 Prior notification of a concentration (Case COMP/M.1839 - Halbergerhütte/Bopp & Reuther/Muffenrohr)

C 169 2000/C 169-0008 Prior notification of a concentration (Case COMP/M.2026 - Clear Channel Communications/SFX Entertainment)

16.06.2000

C 167 2000/C 167-0007 Prior notification of a concentration (Case COMP/M.1964 - Planet

Internet/Fortis Bank/Mine.be JV)

C 167 2000/C 167-0006 Prior notification of a concentration (Case COMP/M.1936 - Siemens Business Services/Lufthansa Systems/Synavion)

C 167 2000/C 167-0006 Prior notification of a concentration (Case COMP/M.2002 - Preussag/Thomson)

15.06.2000

C 165 2000/C 165-0010 Prior notification of a concentration (Case COMP/JV.48 - Vodafone/Vivendi/Canal+)

C 165 2000/C 165-0009 Prior notification of a concentration (Case COMP/M.1939 - Rexam (PLM)/American National Can)

14.06.2000

C 164 2000/C 164-0005 Non-opposition to a notified concentration (Case COMP/M.1684 - Carrefour/Promodès)

C 164 2000/C 164-0004 Prior notification of a concentration (Case COMP/M.2024 - Ivensys/Baan)

C 164 2000/C 164-0003 Non-opposition to a notified concentration (Case COMP/M.1892 - Sara Lee/Courtaulds)

10.06.2000

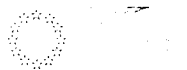
C 162 2000/C 162-0030 Prior notification of a concentration (Case COMP/M.1996 - SCA/Graninge/JV)

C 162 2000/C 162-0029 Prior notification of a concentration (Case COMP/M.1783 - ZF Gotha/Graziano Trasmissioni/JV)

C 162 2000/C 162-0028 Prior notification of a concentration (Case COMP/M.1991 - Trelleborg/Icopal)

09.06.2000

C 161 2000/C 161-0002 Prior notification of a concentration



(Case COMP/M.1972 - Granada/Compass)

08.06.2000

C 159 2000/C 159-0004 Prior notification of a concentration (Case COMP/M.1900 - Solvay/Plastic Omnium)

C 159 2000/C 159-0006 Non-opposition to a notified concentration (Case COMP/M.1887 - Credit Suisse First Boston/Gala Group)

C 159 2000/C 159-0005 Prior notification of a concentration (Case COMP/M.1877 - Boskalis/HBG)

07.06.2000

C 157 2000/C 157-0003 Initiation of proceedings (Case COMP/M.1879 - Boeing/Hughes)

C 157 2000/C 157-0002 Prior notification of a concentration (Case COMP/M.2006 - Enron/MG)

06.06.2000

C 155 2000/C 155-0007 Prior notification of a concentration (Case COMP/M.1978 - Telecom Italia/News Television/Stream)

01.06.2000

C 153 2000/C 153-0005 Prior notification of a concentration (Case COMP/M.2003 - Carlyle/Gruppo Riello)

C 153 2000/C 153-0003 Prior notification of a concentration (Case COMP/M.1859 - ENI/GALP)

C 153 2000/C 153-0004 Prior notification of a concentration (Case COMP/M.1958 - Bertelsmann AG/Groupe Bruxelles Lambert SA (GBL)/Pearson Television)

C 153 2000/C 153-0006 Prior notification of a concentration (Case COMP/M.1998 - Ford/Land Rover)

C 153 2000/C 153-0008 Non-opposition to a notified concentration (Case

COMP/JV.44 - Hitachi/NEC-DRAM/JV)

C 153 2000/C 153-0007 Prior notification of a concentration (Case COMP/M.1997 - Schrodgers/Liberty International Pensions)

STATE AID

23.09.2000

C 272 2000/C 272-0042 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 272 2000/C 272-0040 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 272 2000/C 272-0030 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning Case C 36/2000 (ex NN 135/99) - aid in favour of Graf von Henneberg Porzellan GmbH - Germany

C 272 2000/C 272-0022 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning Case C 4/2000 (ex NN 53/99) - State aid in favour of manure processing projects - the Kingdom of the Netherlands

C 272 2000/C 272-0017 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning Case C 64/98 (ex NN 95/97) - yearly grants to Istituto Poligrafico e Zecca dello Stato

C 272 2000/C 272-0002 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning Case C 28/2000 (ex

NN 52/99) - Aid in favour of Hirschfelder Leinen und Textil GmbH (Hiltex), Saxony - Germany

C 272 2000/C 272-0044 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

22.09.2000

L 238 2000/L 238-0050 Commission Decision of 11 April 2000 on the State aid implemented by the Federal Republic of Germany for System Microelectronic Innovation GmbH, Frankfurt/Oder (Brandenburg) (notified under document number C(2000) 1063)

16.09.2000

C 266 2000/C 266-0028 Corrigendum to the authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty Cases where the Commission raises no objections (OJ C 258 of 9.9.2000)

C 266 2000/C 266-0009 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid/measure C 46/2000 (ex N 563/1999) - Viridian Growth Fund

C 266 2000/C 266-0004 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 266 2000/C 266-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

12.09.2000

L 230 2000/L 230-0013 Decision No 2/2000 of the EU-Romania Association Council



of 17 July 2000 extending by five years the period within which any public aid granted by Romania will be assessed taking into account the fact that Romania is to be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community

09.09.2000

L 229 2000/L 229-0044 Commission Decision of 14 March 2000 on State aid granted by Germany to Elpro AG and its successor companies (notified under document number C(2000) 808)

C 259 2000/C 259-0016 Judgment of the Court of First Instance of 29 June 2000 in Case T-234/95: DSG Dradenauer Stahlgesellschaft mbH v Commission of the European Communities (ECSC - Action for annulment - State aid - Meaning of aid - Criterion of the private investor - Economic unit - Amount of the aid - Misuse of powers)

C 258 2000/C 258-0004 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 258 2000/C 258-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 258 2000/C 258-0004 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 258 2000/C 258-0005 Amendments to the Guidelines on national regional aid

C 258 2000/C 258-0006 Notice on the extension of the period of validity of the Community framework for State aid to the motor vehicle Industry

C 258 2000/C 258-0003 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

07.09.2000

L 227 2000/L 227-0024 Commission Decision of 2 June 1999 concerning State aid granted by Italy to Seleco SpA (notified under document number C(1999) 1524)

02.09.2000

C 252 2000/C 252-0021 Corrigendum to authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty (Cases where the Commission raises no objections) (OJ C 232 of 12.8.2000)

C 252 2000/C 252-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

22.08.2000

L 211 2000/L 211-0007 Commission Decision of 18 January 2000 on the State aid granted by Germany to Linde AG (notified under document number C(2000) 64)

19.08.2000

C 237 2000/C 237-0007 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

17.08.2000

L 207 2000/L 207-0017 Commission Decision of 22 December 1999 on State aid which Italy plans to grant to Fiat Auto SpA for its Mirafiori

Meccanica plant (Turin) (notified under document number C(1999) 5211)

15.08.2000

L 206 2000/L 206-0006 Commission Decision of 8 September 1999 on aid granted by France to Stardust Marine (notified under document number C(1999) 3148)

12.08.2000

C 233 2000/C 233-0008 Judgment of the Court of 23 May 2000 in Case C-106/98 P: Comité d'entreprise de la Société française de production and Others v Commission of the European Communities (Appeal - Natural and legal persons - Directly and individually concerned by the measure - State aid - Decision declaring aid incompatible with the common market - Trade unions and works councils)

C 233 2000/C 233-0003 Judgment of the Court of 16 May 2000 in Case C-83/98 P: French Republic v Ladbrooke Racing Ltd and Commission of the European Communities (Appeal - Competition - State aid)

C 232 2000/C 232-0002 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning Case C 33/98 - Spain: Aid involved in the privatisation arrangements of Babcock Wilcox España SA (BWE)

C 232 2000/C 232-0007 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 232 2000/C 232-0010 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where



the Commission raises no objections

C 232 2000/C 232-0017
Corrigendum to the Community guidelines for State aid in the agriculture sector (OJ C 28 of 1.2.2000)

08.08.2000

C 225 2000/C 225E-0191
Written question E-2681/99 by Luis Berenguer Fuster to the Commission

Subject: Statements by the Spanish government on the unresolved issue of state aid to the electricity sector

C 225 2000/C 225E-0191
Written question E-2682/99 by Luis Berenguer Fuster to the Commission

Subject: Decision on an unresolved case concerning state aids

05.08.2000

L 199 2000/L 199-0083
Decision No 2/2000 of the EU-Lithuania Association Council of 24 July 2000 extending by five years the period within which any public aid granted by Lithuania will be assessed taking into account the fact that Lithuania is to be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community

C 224 2000/C 224-0002
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

01.08.2000

C 219 2000/C 219E-0057
Written question E-1978/99 by Ursula Schleicher to the Commission

Subject: Draft Commission communication on the application of Articles 92 and

93 of the EC Treaty to state aid in the form of loan guarantees

C 219 2000/C 219E-0144
Written question P-2299/99 by Hanja Maij-Weggen to the Commission

Subject: Tax arrangements which distort competition within the EU

29.07.2000

L 193 2000/L 193-0075
Commission Directive 2000/52/EC of 26 July 2000 amending Directive

80/723/EEC on the transparency of financial relations between Member States and public undertakings

L 193 2000/L 193-0079
Commission Decision of 8 July 1999 on aid granted by France to the Crédit Agricole group in connection with the collecting and keeping of notaries' deposits in rural municipalities (notified under document number C(1999) 2147)

C 217 2000/C 217-0002
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 217 2000/C 217-0003
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 217 2000/C 217-0005
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 29/2000 (ex N 457/99) - Ford Genk

C 217 2000/C 217-0020
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning State measures C 27/2000 (ex NN 84/98) - in favour of Deckel Maho Seebach GmbH - Germany

C 217 2000/C 217-0010
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid measure C 19/2000 (ex NN 147/98) - Aid in favour of Technische Glaswerke Ilmenau GmbH - Germany

27.07.2000

L 191 2000/L 191-0030
Commission Decision of 29 March 2000 on the aid scheme implemented by Belgium under Article 29ter of the Economic Expansion Act of 30 December 1970, as amended by the Decree of 25 June 1992 (notified under document number C(2000)1007)

22.07.2000

C 211 2000/C 211-0018
Judgment of the Court of First Instance of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/97, T-3/98 to T-6/98 and T-23/98: Alzetta Mauro and Others v Commission of the European Communities (Transport of goods by road - State aid - Action for annulment - Whether trade between Member States affected and competition distorted - Conditions for a derogation from the prohibition laid down by Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) - New aid or existing aid - Principle of the protection of legitimate expectations - Principle of proportionality - Statement of reasons)

C 211 2000/C 211-0017
Judgment of the Court of First Instance of 13 June 2000 in Joined Cases T-204/97 and T-270/97: EPAC - Empresa para a Agroalimentação e Cereais SA v Commission of the European Communities (Action for



annulment - State Aid - Article 92(1) and (3) of the EC Treaty (now, after amendment, Article 87(1) and (3) EC) - Meaning of aid - State guarantee for the financing of a public undertaking - Suspension of aid - No need to adjudicate)

C 210 2000/C 210-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 210 2000/C 210-0003 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

18.07.2000

C 203 2000/C 203E-0166 E-2353/99 by Raffaele Costa to the Commission

Subject: State aid granted to RAI by Italy

C 203 2000/C 203E-0028 E-1701/99 by Raffaele Costa to the Commission

Subject: State aid and the RAI affair

C 203 2000/C 203E-0111 E-2004/99 by Luis Berenguer Fuster to the Commission

Subject: State aid to the Terra Mítica theme park in Benidorm (Alicante) and its compatibility with the common market

C 203 2000/C 203E-0093 E-1942/99 by Isidoro Sánchez García to the Commission

Subject: Implementing specific measures for the ultraperipheral regions in the field of state aid

15.07.2000

C 202 2000/C 202-0016 Corrigendum to authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections (OJ C 184 of 1 July 2000)

C 202 2000/C 202-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

08.07.2000

C 190 2000/C 190-0009 State Aid - Invitation to submit comments pursuant to Article 6(5) of Decision 2496/96/ECSC, concerning aid C 24/2000 (ex N 215/99) - Voest Alpine Stahl Linz GmbH - investment aid for water purification facilities

C 190 2000/C 190-0004 State Aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning the measure C 14/2000 (ex N 613/99) Netherlands - exemption from mineral levies under the manure law

C 190 2000/C 190-0003 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 190 2000/C 190-0002 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

06.07.2000

L 165 2000/L 165-0025 Commission Decision of 16 November 1999 on aid granted by France to Gooding Consumer Electronics Ltd in connection with the purchase of the former Grundig plant at Creutzwald (notified under document number C(1999) 4230)

L 165 2000/L 165-0018 Commission Decision of 16 November 1999 on aid which France is planning to grant to Cofidur to help it take over the

former Gooding (ex Grundig) plant at Creutzwald (notified under document number C(1999) 4229)

01.07.2000

C 184 2000/C 184-0025 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 184 2000/C 184-0024 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 184 2000/C 184-0023 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 184 2000/C 184-0020 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 184 2000/C 184-0018 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 184 2000/C 184-0010 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning measure C 15/2000 (ex N 638/99) - Modified reduced social contributions aid scheme

C 184 2000/C 184-0002 State aid - Invitation to submit comments pursuant to Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry, concerning aid C 25/2000 (ex N 145/99 and N 749/99) notified by Italy to



the ECSC steel companies, Lucchini SpA and Siderpotenza SpA

C 184 2000/C 184-0025
Extension of the validity of the Community guidelines on state aid for environmental protection

29.06.2000

L 156 2000/L 156-0039
Commission Decision of 29 March 2000 on state aid implemented by Germany in favour of Kvaerner Warnow Werft GmbH (1999) and amending Decision 1999/675/EC (notified under document number C(2000) 1008)

28.06.2000

L 155 2000/L 155-0052
Commission Decision of 22 December 1999 on the aid scheme which France is planning to implement in favour of the French port sector (notified under document number C(1999) 5204)

24.06.2000

C 176 2000/C 176-0020
Judgment of the Court of First Instance of 10 May 2000 in Case T-46/97: SIC - Sociedade Independente de Comunicação SA v Commission of the European Communities (Financing of public television channels - Complaint - State Aid - Failure to open the procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) - Action for annulment)

C 175 2000/C 175-0020
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 175 2000/C 175-0019
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where

the Commission raises no objections

C 175 2000/C 175-0011
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty concerning aid measure C 16/2000 (ex N 792/99) - Italian regional aid map for the period 2000-2006 in Italy

C 175 2000/C 175-0006
State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 22/2000 (ex N 129/2000) - State aid in favour of Dutch manure transport companies

23.06.2000

L 150 2000/L 150-0064
Commission Decision of 22 December 1999 on State aid implemented by Germany in favour of Entstaubungstechnik Magdeburg GmbH (notified under document number C(1999) 5205)

L 150 2000/L 150-0050
Commission Decision of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (notified under document number C(1999) 4268)

L 150 2000/L 150-0038
Commission Decision of 20 July 1999 on State aid to be granted by Germany to CBW Chemie GmbH, Bitterfeld-Wolfen (notified under document number C(1999) 3272)

L 150 2000/L 150-0001
Commission Decision of 8 July 1999 on a measure implemented by the Federal Republic of Germany for Westdeutsche Landesbank - Girozentrale (WestLB) (notified under document number C(1999) 2265)

20.06.2000

C 170 2000/C 170E-0125
Written question E-1925/99 by Luis Berenguer Fuster to the Commission

Subject: Inclusion of specific data in the state aid proceedings relating to the Spanish electricity sector

C 170 2000/C 170E-0073
Written question E-1680/99 by Karl von Wogau to the Commission

Subject: Distortion of competition resulting from European Union subsidies

C 170 2000/C 170E-0095
Written question P-1889/99 by Luis Berenguer Fuster to the Commission

Subject: Possible conflict of interests in proceedings in relation to state aid

C 170 2000/C 170E-0095
Written question E-1761/99 by Luis Berenguer Fuster to the Commission

Subject: Proceedings opened in relation to state aid in the Spanish electricity sector

17.06.2000

L 144 2000/L 144-0027
Decision No 1/2000 of the EU-Bulgaria Association Council of 28 February 2000 extending by five years the period within which any public aid granted by Bulgaria will be assessed taking into account the fact that Bulgaria is to be regarded as an area identical to those areas of the Community described in Article 87(3)(a) of the Treaty establishing the European Community

C 169 2000/C 169-0003
Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 169 2000/C 169-0002
Authorisation for State aid



pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

10.06.2000

C 163 2000/C 163-0008 Case C-61/00 P: Appeal brought on 23 February 2000 by Volkswagen AG and Volkswagen Sachsen GmbH against the judgment delivered on 15 December 1999 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in Joined Cases T-132/96 and T-143/96 between Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH, of the one part, and the Commission of the European Communities of the other part

C 163 2000/C 163-0007 Case C-57/00 P: Appeal brought on 23 February 2000 by Freistaat Sachsen against the judgment delivered on 15 December 1999 by the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities in Joined Cases T-132/96 and T-143/96 between Freistaat Sachsen, Volkswagen AG and Volkswagen Sachsen GmbH, of the one part, and the Commission of the European Communities of the other part

C 162 2000/C 162-0009 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid insert C 21/2000 (ex NN 158/99) - Ojala-yhtymä Oy - Investment in Haapajärvi
C 162 2000/C 162-0023 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 162 2000/C 162-0004 State aid - Invitation to submit comments pursuant to Article 88(2) (ex-Article 93(2)) of the EC Treaty concerning a number of aid measures C 71/98 (ex N 693/97 and NN 130/98) - Italy - granted under the rules on the recovery and completion of serviced small business areas developed by Sirap SpA and the instructions issued to municipalities for the allocation of plots and industrial buildings

C 162 2000/C 162-0022 Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty - Cases where the Commission raises no objections

C 162 2000/C 162-0015 State aid - Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C 20/2000 (ex NN 146/98) - Sniace SA - Spain

08.06.2000

L 137 2000/L 137-0028 EFTA Surveillance Authority Decision No 275/99/COL of 17 November 1999 introducing guidelines on State aid elements in sales of land and buildings by public authorities and amending for the 20th time the Procedural and Substantive Rules in the field of State aid

L 137 2000/L 137-0020 EFTA Surveillance Authority Decision No 149/99/COL of 30 June 1999 introducing guidelines on the application of State aid rules to measures relating to direct business taxation and amending for the 19th time the Procedural and Substantive Rules in the field of State aid

L 137 2000/L 137-0011 EFTA Surveillance Authority Decision No 113/99/COL of 4 June 1999 introducing

guidelines on State aid for training and amending for the 18th time the Procedural and Substantive Rules in the field of State aid

L 137 2000/L 137-0001 Commission Decision of 20 July 1999 on aid granted by Italy to Sangalli Manfredonia Vetro (notified under document number C (1999) 2895)

L 135 2000/L 135-0036 EFTA Surveillance Authority Decision No 276/99/COL of 17 November 1999 including new guidelines on State aid to shipbuilding granted as development assistance to a developing country and amending for the twenty-first time the Procedural and Substantive Rules in the Field of State aid

PRESS RELEASES

1.6.2000 - 30.9.2000

All texts are available from the Commission's press release database **RAPID** at: <http://europa.eu.int/rapid/start>. Enter reference (e.g.: IP/00/544) in the "Reference" input box on the research form to retrieve text of a press release. Press releases on competition matters can be consulted daily from DG Competition's website at: <http://europa.eu.int/comm/dg04/pressre.htm>

Note: languages available vary for different press releases.

ANTITRUST

IP/00/1064 Date: 2000-09-27
Competition: Commission proposes regulation that extensively amends system for implementing Articles 81 and 82 of the Treaty



IP/00/1043 Date: 2000-09-22 The prices of telecoms leased lines are still an obstacle to the creation of e-Europe

IP/00/1036 Date: 2000-09-21 Commission opens an in-depth investigation into Metso's acquisition of Svedala

IP/00/1030 Date: 2000-09-20 Commission decides to reject wine-production scheme in France

IP/00/1028 Date: 2000-09-20 Commission imposes a 43 million fine on Opel Nederland B.V. for obstruction of new car exports in the Netherlands

IP/00/1014 Date: 2000-09-15 Triumph's export ban for motorcycles brought to an end upon Commission's intervention

IP/00/971 Date: 2000-09-05 Commission gives green light to Cofunds Ltd, an on-line supermarket for retail mutual funds

IP/00/874 Date: 2000-07-27 Commission acts against discriminatory landing fees at Spanish and Italian airports

IP/00/846 Date: 2000-07-26 Commission takes Spain to Court of Justice over failure to recover illegal tax credits to public shipyards

IP/00/835 Date: 2000-07-25 Commission acts to prevent discrimination between airline computer reservation systems

IP/00/739 Date: 2000-07-18 EU and Japan reach mutual understanding on substantial elements of an envisaged co-operation agreement in the competition field

IP/00/784 Date: 2000-07-14 Commission releases list of banks in cartel investigation

IP/00/781 Date: 2000-07-13 Car prices in the EU: price differentials remain high

IP/00/766 Date: 2000-07-12 Commission adopts a draft Competition Directive consolidating existing Directives on competition in the telecommunications markets

IP/00/765 Date: 2000-07-12 Commission asks incumbent operators to provide information on local loop access

IP/00/763 Date: 2000-07-12 Commission approves rules on separation of accounts for public service providers

IP/00/725 Date: 2000-07-06 Commission decision of January 1998 against Volkswagen is confirmed by the European Court of First Instance

IP/00/713 Date: 2000-07-05 Commission takes action against Editions Nathan to safeguard competition in educational material

IP/00/709 Date: 2000-07-05 Commission to recover 350.8 million euro worth of CAP expenditure from Member States

IP/00/704 Date: 2000-07-04 Commission warns banks in four countries about euro-zone exchange charges

IP/00/698 Date: 2000-07-03 Commission opens in-depth investigation into the acquisition of Perstorp by Industri Kapital

IP/00/684 Date: 2000-06-29 Commission closes competition case after Saeco implements international guarantee for its products

IP/00/651 Date: 2000-06-22 New German system of fixed booked prices does not violate EU competition rules as long as certain conditions are respected

IP/00/591 Date: 2000-06-08 Commission approves ticketing arrangements for Euro 2000

IP/00/590 Date: 2000-06-08 Mario Monti launches "Competition day" in Lisbon on 9 June

MERGERS

IP/00/1067 Date: 2000-09-27 Commission clears Boeing's acquisition of the satellite business of Hughes Electronics

IP/00/1063 Date: 2000-09-27 Commission opens in-depth probe into the proposed acquisition of Metsä Tissue by SCA Möllynycke.

IP/00/1058 Date: 2000-09-25 Commission authorises joint venture between PSA and Vivendi

IP/00/1055 Date: 2000-09-25 Commission clears acquisition of joint control of Bravida by Telenor and Procuritas Capital Partners.

IP/00/1054 Date: 2000-09-25 Commission authorises acquisition by Schroder Ventures of Veba's Memec

IP/00/1053 Date: 2000-09-25 Commission clears acquisition of joint control over Johns Manville

IP/00/1052 Date: 2000-09-25 Commission approves acquisition of Italdata's hardware business by Flextronics

IP/00/1051 Date: 2000-09-25 Commission clears Deutsche Bank and Enel acquisition of joint control over Rio Nuovo

IP/00/1050 Date: 2000-09-25 Commission clears Dutch mobile telephony venture between Belgacom, Tele Danmark and T-Mobile

IP/00/1049 Date: 2000-09-25 Commission clears purchase of BASF's Novolen polypropylene technology business

IP/00/1020 Date: 2000-09-19 Commission clears way for Alstom's takeover of Fiat Ferroviaria

IP/00/1017 Date: 2000-09-18 Commission clears NovaBank venture between Banco Comercial Portugues and Interamerican

IP/00/1013 Date: 2000-09-15 Commission clears Salzgitter buy of steel tubes maker Mannesmannröhren-Werke

IP/00/1002 Date: 2000-09-13 Commission clears joint buy of Eutectic by Messer Industrie and Carlyle Europe partners

IP/00/1001 Date: 2000-09-13 Commission clears Unión Fenosa



➤ INFORMATION SECTION

stake in Spain's Cable i Televisió de Catalunya (Menta)

IP/00/1000 Date: 2000-09-13
Commission approves acquisition of sole control in Italian tour operator Alpitur by Ifil

IP/00/993 Date: 2000-09-12
Commission clears takeover by Sanpaolo IMI and MWCR Lux of two Italian manufacturers

IP/00/992 Date: 2000-09-12
Commission clears creation of joint venture Ciberion by British American Ventures and Cap Gemini Ernst & Young

IP/00/991 Date: 2000-09-12
Commission clears Swedish joint venture, Drutt, between Telia of Sweden and Oracle of the USA

IP/00/990 Date: 2000-09-12
Commission approves acquisition of McKechnie by Cinven

IP/00/989 Date: 2000-09-12
Commission clears France's Feu Vert stake in Spanish car repairer Autocenter Delauto

IP/00/979 Date: 2000-09-06
Commission authorises BASF to take stake in DyStar

IP/00/972 Date: 2000-09-05
Commission clears the acquisition by Toyota Motor Corporation of its UK distributor Toyota (GB) PLC

IP/00/970 Date: 2000-09-05
Commission authorises the creation of the joint venture BOL Italia by Bertelsmann AG and Mondadori S.p.A.

IP/00/969 Date: 2000-09-05
Commission clears acquisition by Clayton Dubilier & Rice of Italtel

IP/00/968 Date: 2000-09-05
Commission clears creation of a joint venture between BT, Japan Telecom and Vodafone in Japan

IP/00/967 Date: 2000-09-05
Commission authorises merger between ZF Gotha and Graziano Trassmissioni

IP/00/962 Date: 2000-09-04
Commission clears Volvo's acquisition of Renault's truck

business subject to significant undertakings

IP/00/960 Date: 2000-09-01
Commission clears joint venture of Totalfina and Saarberg

IP/00/957 Date: 2000-08-31
Commission approves NewMonday.com joint venture between Randstad and VNU (both NL)

IP/00/955 Date: 2000-08-30
Commission gives Siemens conditional go-ahead to take control of Mannesmann subsidiaries Dematic, VDO and Sachs. Bosch's acquisition of Rexroth is still under examination

IP/00/954 Date: 2000-08-30
Commission authorises joint venture between Sextant and Diehl

IP/00/953 Date: 2000-08-30
Commission authorises acquisition by Riva (Italy) of Société des Aciers d'Armature pour le Béton (France)

IP/00/952 Date: 2000-08-30
Commission clears acquisition by Menzies (UK) of joint control of Lufthansa Ground Services (UK)

IP/00/951 Date: 2000-08-30
Commission approves full take-over of Frosch Touristik (FTI) by Airtours plc.

IP/00/949 Date: 2000-08-28
Commission approves joint venture between Deutsche Bank and the Warburg banking group

IP/00/948 Date: 2000-08-28
Commission authorises SCA Packaging acquisition of Metsä Corrugated, subject to conditions

IP/00/947 Date: 2000-08-28
Commission authorises Snecma's acquisition of Labinal

IP/00/945 Date: 2000-08-25
Commission clears acquisition by Doughty Hanson & Co Limited of Ranks Hovis McDougall Group.

IP/00/944 Date: 2000-08-25
Commission clears joint venture of E.ON and Allianz Capital Partner

IP/00/943 Date: 2000-08-25
Commission clears acquisition of Young & Rubicam by WPP

IP/00/940 Date: 2000-08-23
Commission refers Interbrew/Bass merger to the UK competition authorities

IP/00/939 Date: 2000-08-22
Commission clears Sei and Mitsubishi Electric Europe joint venture for provision of facility management services in Italy.

IP/00/938 Date: 2000-08-22
Commission clears acquisition by HSBC of sole control of part of the BBA Friction of the BBA Group, plc.

IP/00/937 Date: 2000-08-22
Commission authorises joint venture between Arla Foods Hellas and Delta

IP/00/936 Date: 2000-08-22
Commission clears a joint venture between Sonera Systems and ICL Invia

IP/00/935 Date: 2000-08-22
Commission approves take-over of Heiploeg Shellfish International B.V. by UBS Capital B.V.

IP/00/934 Date: 2000-08-22
Commission approves joint venture of RWE and Iberdrola

IP/00/905 Date: 2000-08-02
Commission clears acquisition by Callahan of a second Deutsche Telekom regional cable TV network

IP/00/904 Date: 2000-08-02
Commission clears Rio Tinto takeover bid for Australia's North TXT: FR

IP/00/903 Date: 2000-08-02
Commission clears acquisition of joint control of COKOWI by OMV and Rheinbraun

IP/00/901 Date: 2000-08-01
Commission clears mobile telephony joint venture in Spain.

IP/00/900 Date: 2000-08-01
Commission authorises acquisition of Assidomän paper and packaging companies by Mondi/Frantschach

IP/00/896 Date: 2000-07-31
Commission approves the Volbroker.com electronic brokerage joint venture between six major banks



IP/00/895 Date: 2000-07-31
Commission approves acquisition of PHH Europe Companies by BNP-Paribas

IP/00/894 Date: 2000-07-31
Commission clears joint venture between Andersen Consulting and British Telecommunications

IP/00/893 Date: 2000-07-31
Commission authorises two Asian joint ventures between Valeo and Robert Bosch GmbH.

IP/00/884 Date: 2000-07-28
Commission clears AOM buy of Air Liberté and TAT European Airlines

IP/00/883 Date: 2000-07-28
Commission clears acquisition of joint control of UK real estate company MEPC

IP/00/864 Date: 2000-07-27
Commission clears Preussag's acquisition of Thomson travel

IP/00/844 Date: 2000-07-26
Commission clears merger of agrochemical businesses of AstraZeneca and Novartis, subject to substantial divestitures.

IP/00/843 Date: 2000-07-26
Commission clears joint venture between ABB, BILFINGER and MVV ENERGIE

IP/00/825 Date: 2000-07-24
Commission clears acquisition of Shell Coal Holdings by Anglo American

IP/00/824 Date: 2000-07-24
Commission authorises joint venture between Rhodia and Raisio

IP/00/823 Date: 2000-07-24
Commission clears acquisition by CGNU of Aseguradora Valenciana in insurance sector

IP/00/821 Date: 2000-07-24
Commission clears Vizzavi Internet portal venture between Vodafone, Vivendi and Canal+ subject to conditions

IP/00/814 Date: 2000-07-20
Commission clears merger between beverage cans producers Rexam and American National Can, subject to commitments

IP/00/808 Date: 2000-07-19
European Commission approves conditional funding for Trasmediterranea

IP/00/800 Date: 2000-07-19
Commission clears Pirelli's acquisition of BICC's power cables plants

IP/00/795 Date: 2000-07-18
Commission clears acquisition of WF Electrical by Hagemeyer

IP/00/790 Date: 2000-07-17
Commission clears purchase of SFX Entertainment by Clear Channel Communications

IP/00/788 Date: 2000-07-14
Commission clears Western Power Distribution acquisition of Hyder

IP/00/783 Date: 2000-07-14
Commission approves e-commerce joint venture between Deutsche Bank and SAP

IP/00/764 Date: 2000-07-12
Commission fines Mitsubishi for failing to supply information on Kvaerner/Ahlström joint venture

IP/00/755 Date: 2000-07-12
Commission clears Telefónica buy of Endemol

IP/00/754 Date: 2000-07-12
Commission clears acquisition of Danone's beer businesses by Scottish & Newcastle

IP/00/753 Date: 2000-07-12
Commission clears acquisition of Dyno by Industri Kapital subject to commitments

IP/00/743 Date: 2000-07-11
Commission clears Belgian joint venture between Planet Internet and Fortis Bank

IP/00/734 Date: 2000-07-10
Commission clears Invensys purchase of Dutch software company Baan

IP/00/733 Date: 2000-07-07
Microsoft gives up joint control over Telewest as Commission objects to deal

IP/00/730 Date: 2000-07-07
Commission approves setting up of Synavion by Siemens and Lufthansa

IP/00/724 Date: 2000-07-06
Commission clears joint venture between Svenska Cellulosa and Graninge

IP/00/712 Date: 2000-07-05
Commission clears German construction joint venture between Saint Gobain and IWKA

IP/00/711 Date: 2000-07-05
Commission clears Enron's takeover bid for metals trader MG

IP/00/710 Date: 2000-07-05
Commission clears merger between Dutch dredgers Boskalis Westminster and Hollandse Beton Groep

IP/00/697 Date: 2000-07-03
Commission clears BASF's acquisition of American Cyanamid, subject to conditions

IP/00/695 Date: 2000-06-30
Commission clears joint control of Stream by Telecom Italia and News Television

IP/00/694 Date: 2000-06-30
Commission clears merger between Granada and Compass Group

IP/00/693 Date: 2000-06-30
Commission clears purchase of Land Rover by Ford

IP/00/692 Date: 2000-06-30
Commission clears ENI stake in Portuguese oil and gas company GALP

Document Number: IP/00/691 Date: 2000-06-30
Commission clears the acquisition of Pearson TV by Bertelsmann and GBL

IP/00/690 Date: 2000-06-30
Commission clears joint venture between Phillips and Chevron

IP/00/681 Date: 2000-06-29
Commission clears Solvay's joint venture with Plastic Omnium

IP/00/680 Date: 2000-06-29
Commission clears purchase by Schrodors of Liberty International Pensions

IP/00/671 Date: 2000-06-28
Commission launches review of Merger Regulation and simplifies procedure for unproblematic mergers

IP/00/668 Date: 2000-06-28
Commission prohibits merger between MCI WorldCom and Sprint

IP/00/667 Date: 2000-06-28
Commission clears sale of Viag's glass packaging and tubing unit

IP/00/666 Date: 2000-06-28
Commission clears Carlyle Europe Partners stake in heating equipment manufacturer Gruppo Riello

IP/00/655 Date: 2000-06-23
Commission clears merger between Canal+, Lagardère and Liberty Media

IP/00/654 Date: 2000-06-23
Commission approves takeover of Raab Karcher by Saint-Gobain

IP/00/650 Date: 2000-06-22
The European Commission has approved the acquisition by British Telecommunications plc (BT) of control of the whole of the Dutch undertaking Telfort Holding N.V. ("Telfort").

IP/00/644 Date: 2000-06-21
Commission clears the acquisition by RTL Newmedia of a stake in PrimusPower

IP/00/642 Date: 2000-06-21
Commission clears the acquisition of Babcock's power transmission equipment unit by CVC

IP/00/637 Date: 2000-06-20
Commission clears Deutsche Telekom's first sale of a regional cable TV network in Germany

IP/00/634 Date: 2000-06-19
Commission opens full investigation into AOL/Time Warner merger

IP/00/630 Date: 2000-06-16
Commission clears the acquisition by Toyoda Automatic Loom Works of Sweden's BT Industries

IP/00/629 Date: 2000-06-16
Commission clears acquisition of Dial Group by ABN vehicle leasing subsidiary

IP/00/628 Date: 2000-06-16
Commission clears the acquisition by Thomson-CSF of Racal

IP/00/627 Date: 2000-06-16
Commission clears creation of Greek real estate joint venture

IP/00/622 Date: 2000-06-15
Commission approves telephone directory joint venture between Telenor Media and Viag Interkom

IP/00/618 Date: 2000-06-15
Commission opens full probe into Swissair's acquisition of a stake in Portuguese airline Portugália

IP/00/617 Date: 2000-06-14
Commission opens full investigation into Time Warner/EMI merger

IP/00/613 Date: 2000-06-13
Commission allows merger of VEBA and VIAG subject to stringent conditions

IP/00/603 Date: 2000-06-13
Commission clears the acquisition of Colonial by Winterthur Life

IP/00/594 Date: 2000-06-09
Commission clears Johnson & Johnson venture with Mercury Asset Management

IP/00/589 Date: 2000-06-07
Commission fines ADM, Ajinomoto, others in lysine cartel

IP/00/574 Date: 2000-06-05
Commission clears merger between Arvin and Meritor

STATE AID

IP/00/1040 Date: 2000-09-21
Aids in favour of tobacco producers in Italy

IP/00/1039 Date: 2000-09-21
Measures to compensate farmers for adverse climate events in Italy

IP/00/1033 Date: 2000-09-20
The Commission authorises FF 26 billion (4 billion) in State aid to the French coal industry

IP/00/1027 Date: 2000-09-20
Commission approves State aid in connection with electricity reform in Denmark

IP/00/1026 Date: 2000-09-20
Commission takes decisions on three state aid cases in the motor

vehicle sector in the United Kingdom

IP/00/1025 Date: 2000-09-20
Commission opens investigation procedure on State aid granted by France to Mines et Potasses d'Alsace

IP/00/1024 Date: 2000-09-20
Commission brings its review of regional aid in the Community to a successful conclusion with the approval of the maps for Italy and Belgium

IP/00/1023 Date: 2000-09-20
Commission revokes previous decision ordering recovery of aid from SNIACE S.A., Spain

IP/00/852 Date: 2000-07-26
Commission clears aid to glass joint ventures in France

IP/00/851 Date: 2000-07-26
Commission clears aid for new Motorola plant in Scotland

IP/00/850 Date: 2000-07-26
Commission investigates restructuring aid to German engine-maker

IP/00/849 Date: 2000-07-26
Commission approves UK regional aid map

IP/00/848 Date: 2000-07-26
State aid - Commission investigates venture capital fund in Northern Ireland

IP/00/847 Date: 2000-07-26
Commission seeks partial recovery of aid to German micro-electronics group.

IP/00/845 Date: 2000-07-26
Commission relaxes its policy on state aid in the outermost regions

IP/00/804 Date: 2000-07-19
Commission investigates aid in a management contract between German Georgsmarienhütte and Gröditz

IP/00/803 Date: 2000-07-19
Commission approves Luxembourg regional aid map regional development scheme

IP/00/802 Date: 2000-07-19
Commission investigates aid to IVECO

IP/00/801 Date: 2000-07-19
Commission approves State aid to
Lenzing Lyocell, Austria

IP/00/770 Date: 2000-07-12
Commission uses injunction to
obtain details of aid to Italian ports

IP/00/768 Date: 2000-07-12
Commission approves investment
aid for new chemical plant at BASF
Schwarzheide (Germany)

IP/00/762 Date: 2000-07-12
Commission approves Swedish
State aid scheme to improve
conditions in houses, schools and
workplaces

IP/00/761 Date: 2000-07-12
Commission takes partially negative
decision on state aid to Fiat
Mirafiori

IP/00/760 Date: 2000-07-12
Commission opens state aid
investigation into further
restructuring of public shipyards in
Spain.

IP/00/759 Date: 2000-07-12
Commission decides to investigate
restructuring aid for two companies
of former Lintra holding

IP/00/758 Date: 2000-07-12
Commission approves regional aid
map for the Netherlands

IP/00/757 Date: 2000-07-12
Commission gives green light to
investment aid scheme (Law 488)
targeting less favoured regions of
Italy

IP/00/756 Date: 2000-07-12
Commission approves state aid
contained in UK's High Technology
Fund for early stage enterprises

IP/00/702 Date: 2000-07-03
Yugoslavia financial sanctions:
Commission adopts 'White List' of
companies excluded

IP/00/676 Date: 2000-06-28
Extension of the validity of
guidelines on state aid for
environmental protection

IP/00/675 Date: 2000-06-28
Commission declares the aid
granted to the steel company
Salzgitter (Germany) illegal

IP/00/674 Date: 2000-06-28
Commission launches investigation
into a financial and tax aid scheme
for the Madeira free zone (Portugal)

IP/00/672 Date: 2000-06-28 The
Commission approves the part of
the regional aid map for the "Lisboa
e Vale do Tejo" region in Portugal

IP/00/670 Date: 2000-06-28
Commission approves a tax
reduction scheme to promote
investment in Madeira

IP/00/669 Date: 2000-06-28
Commission approves a French
training aid scheme.

IP/00/661 Date: 2000-06-27
Kosovo, Serbia, Montenegro :
Commission approves humanitarian
aid worth 61 million Euro

IP/00/646 Date: 2000-06-21
Commission decides that State aid
in favour of Manufacture
Corrézienne de Vêtements is not
compatible with the EC Treaty

IP/00/645 Date: 2000-06-21
Commission rules that State aid to
German CD producer was illegal
and must be recovered

IP/00/611 Date: 2000-06-13
Commission approves aid scheme
of French SME Development Fund

IP/00/610 Date: 2000-06-13
Commission decides that no aid was
involved in the disposal of the
remaining State participation in Kali
und Salz GmbH

IP/00/609 Date: 2000-06-13
Commission approves aid to
Wildauer Kurbelwelle (Germany)

IP/00/608 Date: 2000-06-13
Commission extends existing
investigation on aid to Babcock
Wilcox España SA to include the
aid elements involved in its
privatisation

IP/00/607 Date: 2000-06-13
Commission approves State aid
schemes for German shipbuilding
for year 2000

IP/00/605 Date: 2000-06-13
Commission investigates aid to Graf
von Henneberg Porzellan GmbH
(Thüringen)

IP/00/604 Date: 2000-06-13
Commission extends the period of
validity of the existing car
framework State aid rules to the
automobile industry

COURT OF JUSTICE / COURT OF FIRST INSTANCE

DEVANT LE TRIBUNAL

Aff. T-92/00

Diputación Foral de Alava / Commission

Annulation de la décision
C(1999)5203 final de la
Commission, du 22 décembre 1999,
relative à l'aide accordée par les
autorités espagnoles à la société
Ramondín S.A. dans la mesure où
celle-ci déclare aides incompatibles
avec le marché commun les
avantages fiscaux octroyés par la
«Diputación Foral de Alava»

Aff. T-98/00

Linde AG / Commission

Annulation de la décision de la
Commission K(2000)64 def, du 18
janvier 2000, déclarant aide d'Etat
une partie de la subvention aux
investissements accordée par les
autorités allemandes à Linde AG

Aff. T-103/00

Ramondín SA et Ramondín Cápsulas SA / Commission

Annulation de la décision
C(1999)5203 final de la
Commission, du 22 décembre 1999,
relative à l'aide accordée par les
autorités espagnoles aux sociétés
Ramondín S.A. et Ramondín
Cápsulas S.A. dans la mesure où
celle-ci déclare aides incompatibles
avec le marché commun les
avantages fiscaux octroyés par la
«Diputación Foral de Alava»

Aff. T-107/00

Consorzio industrie fiammiferi (CIF) / Commission

Annulation du rejet implicite de la demande visant à ce que la Commission réexamine la décision refusant de communiquer au requérant certains documents transmis à «l'Autorità Garante della Concorrenza» aux fins d'une enquête relative à l'application des articles 81 et 82 du traité CE menée par ladite autorité

Aff. T-114/00

Aktionsgemeinschaft Recht und Eigentum eV / Commission

Annulation de la décision de la Commission SG(2000)D/100623, du 22 décembre 1999, d'autoriser les aides octroyées par les autorités allemandes dans le cadre d'un programme d'acquisition de terres ayant pour objectif la privatisation de terres et la restructuration de l'agriculture dans les nouveaux Länder

Aff. T-124/00

Federazione Associazioni Imprese Distribuzione (FAID Federdistribuzione) e.a. / Commission

Annulation de la décision de la Commission 2000/128/CE, du 11 mai 1999, concernant les régimes d'aide mis à exécution par l'Italie portant mesures pour l'emploi, en ce qu'elle déclare incompatibles avec le marché commun les aides accordées pour l'embauche de travailleurs par des contrats de formation et de travail et les aides pour la transformation de contrats de formation et de travail en contrats à durée indéterminée qui ne remplissent pas certaines conditions

Aff. T-134/00

Kvaerner Warnow Werft GmbH / Commission

Annulation de la décision de la Commission C 46/99, du 15 février

2000, concernant une aide accordée par les autorités allemandes à la Kvaerner Warnow Werft GmbH

Aff. T-150/00

Groupeement Européen des Producteurs de Verre Plat / Commission

Annulation de la décision de la Commission, du 20 juillet 1999, C(1999)2895 def, concernant l'aide accordée par le gouvernement italien en faveur de Sangalli Manfredonia Vetro dans le cadre de la construction d'une usine de verre plat à Manfredonia (Italie méridionale)

Aff. T-156/00

Titan Cement Company SA / Commission

Annulation de la décision 2000/199/CE de la Commission, du 17 mars 1999, concernant une aide d'Etat accordée par la Grèce à la société Heracles General Cement Company

Aff. T-158/00

Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) / Commission

Annulation de la décision de la Commission, du 21 mars 2000, déclarant compatible avec le marché commun et le fonctionnement de l'accord EEE l'opération de concentration visant à l'acquisition par BSkyB (British Sky Broadcasting Group plc) de 24 pour-cent de KirchPayTV GmbH & Co. KGaA, sur base du règlement (CEE) n. 4064/89 du Conseil

Aff. T-165/00

Consorzio industrie fiammiferi (CIF) / Commission

Annulation de la décision du 7 avril 2000, rejetant la demande visant à ce que la Commission réexamine la décision refusant de communiquer

au requérant certains documents transmis à «l'Autorità Garante della Concorrenza» aux fins d'une enquête relative à l'application des articles 81 et 82 du traité CE menée par ladite autorité

DEVANT LA COUR

Aff. C-113/00

Espagne / Commission

Annulation de la décision C(2000)5207 final de la Commission concernant le régime d'aides de l'Espagne en faveur des productions horticoles destinées à la transformation industrielle dans la région Extremadura pendant la campagne de 1997/1998

Aff. C-114/00

Espagne / Commission

Annulation de la décision C(1999)5201 final de la Commission concernant le régime d'aides de l'Espagne au financement des fonds de roulement pour le secteur agricole de la région Extremadura

Aff. C-137/00

The Queen ex parte: Milk Marque Ltd et The Monopolies and Mergers Commission Secretary of State for Trade and Industry

The Queen

ex parte: National Farmers' Union et The Competition Commission

Secretary of State for Trade and Industry

The Director General of Fair Trading

Dairy Industries Federation (DIF)

Préjudicielle - High Court of Justice (Queen's Bench Division) - Interprétation des art. 38 à 46 du traité CE (devenus art. 32 à 38 CE), du règlement n. 26 du Conseil portant application de certaines règles de concurrence à la



production et au commerce des produits agricoles et du règlement (CEE) n. 804/68 du Conseil, du 27 juin 1968, portant organisation commune des marchés dans le secteur du lait et des produits laitiers - Possibilité pour les Etats membres d'appliquer des règles nationales de concurrence aux producteurs de lait ayant choisi de s'organiser en coopératives et disposant d'un pouvoir sur le marché

Aff. C-181/00

Flightline Ltd et Secretário de Estado dos Transportes e Comunicações Transportes Aéreos Portugueses SA (TAP)

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la Commission, du 6 juillet 1994, concernant une augmentation de capital, des garanties de crédit et une exonération fiscale en faveur de la compagnie aérienne TAP - Autorisation d'une aide d'Etat à la condition que Portugal accepte l'application de l'art. 4 du règlement (CEE) n. 2408/92 aux régions autonomes de Madère et des Açores dès le 1er janvier 1996

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Manquement d'Etat - Art. 189 du traité CE (devenu art. 249 CE), al. 4 - Décision K(99)2265 de la Commission, du 8 juillet 1999, concernant une mesure de la République fédérale d'Allemagne en faveur de la banque Westdeutsche Landesbank Girozentrale («WestLB») - Absorption de la «Wohnungsbauförderungsanstalt des Landes Nordrhein-Westfalen» par la WestLB - Rémunération de l'augmentation des fonds propres en résultant

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Préjudicielle - Tribunale Vincenza - Interprétation des art. 85 et suivants du traité CE (devenus art. 81 et suivants CE) - Notion d'entreprise - Organisme public pour l'assurance obligatoire des accidents du travail et des maladies professionnelles agissant en régime de monopole légal - Organisme sans but lucratif - Organisme demandant le paiement de primes d'assurance à un artisan qui s'est déjà assuré, pour les mêmes risques, auprès d'une compagnie privée d'assurances

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Competition Policy Newsletter 2001 Number 1 - February

XXIX Report on Competition Policy 1999

Car prices in the EU - November 2000



IMPORTANT MESSAGE TO DG COMPETITION'S CORRESPONDENTS

New Fax Numbers and Addresses for State aid and Antitrust correspondence

DG Competition is overhauling its mail administration system in the areas of antitrust and State aid control. In this context, the receipt of case-related documents (both fax transmissions and mail) will be centralised at one entry point for antitrust and one for State aid.

All correspondents of DG Competition are requested to send competition case-related documents only to the following:

State aid:

Faxes: +32-2-296.12.42.

Mail: Commission of the European Communities
DG Competition
State aid Registry
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B - 1049 Bruxelles/Brussel

In all your correspondence, please specify the name of the case and the case number.

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It is essential that the correspondents use only the above fax numbers and/or addresses for any official communication relating to competition cases. This will facilitate and accelerate the treatment of your correspondence. Fax communications sent to other numbers/addresses may inevitably be treated with delay.

Please note that for merger-related correspondence everything remains the same, in particular the fax number: +32-2-296.43.01.

Thank you for your cooperation.

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